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ABSTRACT

The issue of student rights and the law is presented in this essay and bibliography. Included are discussion of student activism and the courts, law and morality, the new era of student activism, legal, institutional, and moral rights, and institutional administration and the law. Also considered are constitutional questions raised by student right's claims that take into account the unique nature of the bond between students and the academy and the courts' rulings in this regard. A participatory approach to campus decisionmaking is recommended, with both formal and informal mechanisms available that are built on specific rather than vague or overly generalized criteria. The bibliography contains 327 items along with subject, author, and case indexes and, thus, provides a review of the literature from the early 1960s through 1976. (Author/JMF)

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Student Rights, Decisionmaking, and the Law

Terrence N. Tice

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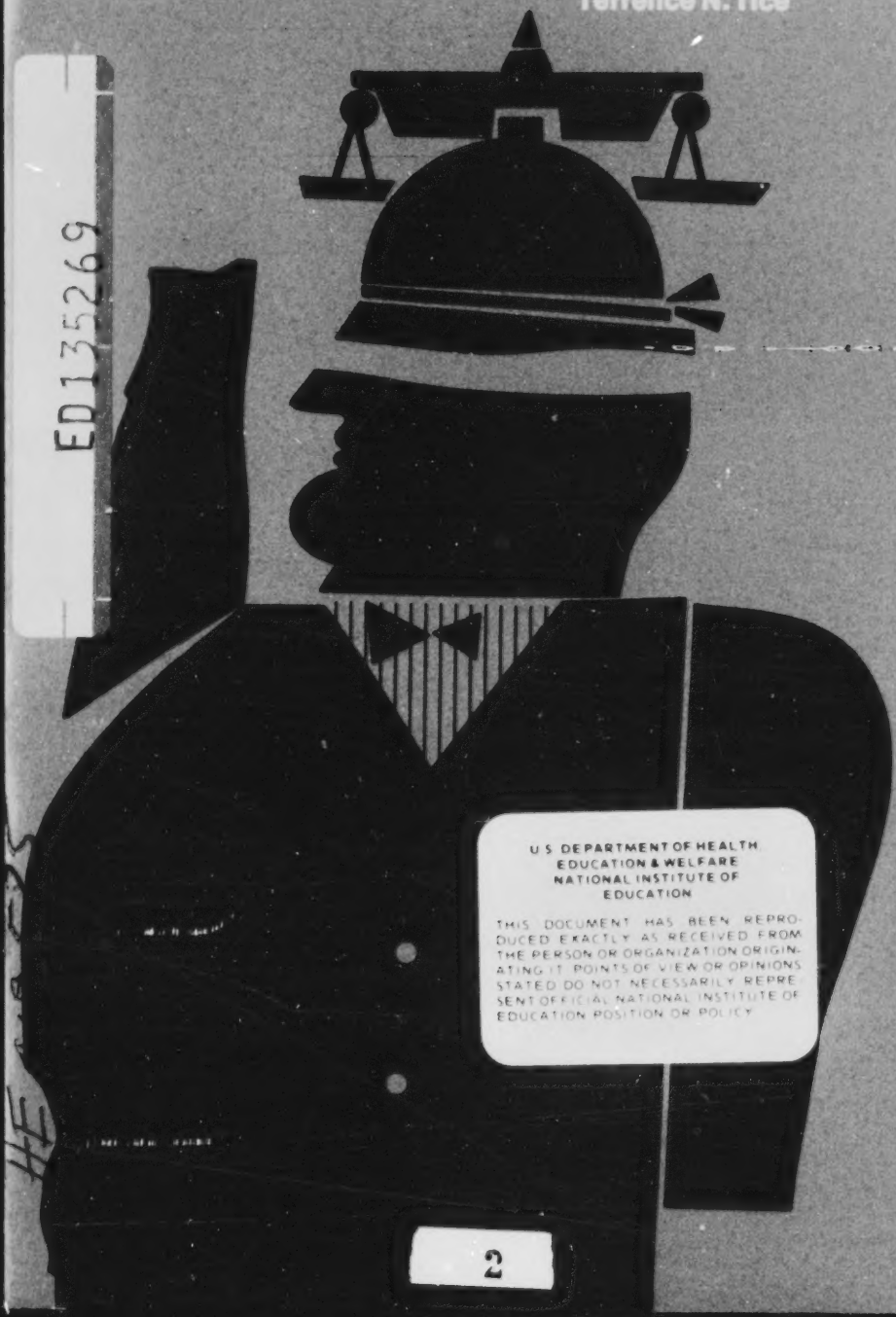

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Student Rights, Decisionmaking, and the Law

Terrence N. Tice

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Foreword

This paper represents an attempt at a definitive bibliography on the issue of student rights and the law. It contains a 327-item bibliography along with subject, author, and case indexes. The bibliography is preceded by an essay that develops what the author believes to be the main strands of the student-rights-and-the-law issue. This includes a discussion of student activism and the courts, law and morality, the new era of student activism, legal, institutional, and moral rights, and institutional administration and the law. Also considered are constitutional questions raised by student right's claims that take into account the unique nature of the bond between students and the academy and the courts' rulings in this regard. A participatory approach to campus decisionmaking is recommended, with both formal and informal mechanisms available that are built on specific rather than vague or overly generalized criteria. The author, Terrence N. Tice, is professor of philosophy, School of Education and a program consultant to the Institute of Continuing Legal Education at the University of Michigan.

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Contents

Overview 1
Introduction 3
Attention to Student Rights 3
Procedure 4
Outline 4
Student Activism and the Courts 5
Activism Today 5
Judicial Approaches 6
Case Law 7
Law and Morality in the Open Society 10
The Open Society 10
Public Problems 11
Two Kinds of Covenant 12
The Coming New Era in Student Activism 14
Developmental and Societal Tasks 14
Grounds for Unrest 15
Modes of Response 16
Legal, Institutional, and Moral Rights 18
Student Rights 18
Rights 19
Moral Rights–Human Rights 20
Legal Rights 21
Institutional Rights 22
The Academic Context 23
The Current Situation: Administration and the Law 24
Due Process 24
Private Institutions 29
First Amendment Rights 30
Interim Suspension and Preliminary Injunction 35
Fourth Amendment Rights: Search and Seizure 36
Student Records 38
Regulatory Power 38
Moral Aspects of Administrative Leadership 39
Guidelines for Administrative Decisions Concerning Students 41
Conclusion 47
Bibliography 48
General Resources 48

Bibliographies 50
Student Rights: Books 51
Student Rights: Articles 62
Other References 86
Index of Names 89
Index of Subjects 93
Table of Cases 98

Overview

This essay and literature review focuses attention on student rights issues in an effort to illuminate some problem areas faced when relating law to campus decision-making. In the United States the law affects an increasing range of campus interactions and administrative practices. There are two grounds for this focus. First, most legal approaches to student rights in principle have to do with all students rather than a small class of students. Second, whenever student activism is on the rise, student rights issues tend to grow; and the way these issues are faced and resolved often has long-term effects on campus life.

After a discussion of these issues, twelve sets of administrative guidelines are offered. Following the essay is a 327-item annotated and indexed bibliography, which provides a listing of resources that is both comprehensive, within specified limits, and detailed.

Heading the list of questions addressed are these: How have the courts actually dealt with student rights issues, on what principles and under what restraints? and, What institutions are likely to be affected by legal decisions and in what ways? More philosophical issues arise from a discussion of these questions. For example, important principles are at stake when choosing how higher education institutions are to achieve agreement and deal with conflict. If we presuppose the image of a learning community able to fulfill democratic ideals in the setting of an open society, what convenants must the participants, or the authorities, enter into? What understanding of law, of individual and institutional rights, and of the moral domain might prompt decisions about what goals to set and how to accomplish them? How may this knowledge be applied to student rights in practical ways? These value questions are inescapable when reflecting with any care about student rights or other matters of "rights" on campus.

In a review of student rights cases and research studies, legal provisions are outlined, particularly provisions that protect the constitutional rights of free speech, privacy, and due process. The type of aid offered so far by the courts is quite restrained. With rare exceptions, judges have not felt comfortable intervening in institutional affairs and generally have not done so. However, the courts will probably extend their control along with that already exercised by

legislatures and other governmental agencies unless institutional responses to issues of rights are supported and supplemented by morally-informed procedures developed on campus.

Administrative guidelines recommended are:

- explore several alternatives to the older, *in loco parentis* view, and emphasize the communal or joint-participatory approach to campus decision-making;
- develop a varied organization of student participation, both formal and informal, and build on specific criteria rather than on vague generalities;
- provide clear regulations, judiciary procedures, modes of communication and modes of policy formulation, that are based on substantial moral and legal footing;
- make a priority list of policy areas to be developed that affect the more substantive rights (e.g., those of free speech and privacy), with the aim of enabling rather than merely restricting action;
- in particular, discern which of the many routes to student influence and participation might be encouraged and facilitated;
- to enable fruitful action, provide training facilities on group process, problem-solving, and conflict-resolution to all participants in campus decision-making;
- finally, prepare for greater involvement with the courts; at the same time, develop campus procedures and agencies that will obviate the need for litigation.

Introduction

Attention to Student Rights

The student protests of the 1960's brought about a new appreciation of student rights, some of it engendered or sustained by court action. Now faculty rights also are a concern, and employment rights have gained in the 1970's. Management rights have always been important in American higher education, but are taking on changing dimensions in varied attempts to clarify student and faculty rights issues. These concerns are providing new responsibilities for administrators and for other participants in the decisionmaking process.

Among the chief movers are the courts, which in recent years have applied a sizeable body of constitutional law to the definition and clarification of student rights questions. College law in the past decade has become a complex and rapidly growing field (13, 152, 165, 221, 237). Student rights matters comprise a small but very significant portion of the field (38, 48, 54, 64).

Within the legal framework, contention over student rights has grown far beyond the issues of student discipline common to the late 1960's. From the student sit-in's at Berkeley in 1964 to the closing of several colleges and universities in 1970, attention was chiefly focused on student protest and student discipline (21, 22, 41, 57, 84, 94, 163). However, by the mid-1970's student leaders became more familiar with the relevant court cases, had a clearer idea about what actions were permitted under law and were thus making rights claims that had little to do with discipline. Still, disciplinary issues have dominated student rights literature and well display how the courts have generally dealt with constitutional rights in campus affairs. For these reasons, student discipline cases will provide the chief examples for discussion here. Other important issues not directly treated are legal aspects of financing, student aid, tuition matters, admission policies, segregation, sex discrimination, state systems, state control over private colleges, marketing of term papers, athletics, local voting rights of students, tort litigation, and regulation of campus radio stations—all of which have had some attention in the courts and in the legal periodicals over the past few years

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• Numbers in parentheses are item numbers in the bibliography.

(1-9). Apart from general resources, only a sampling of the highly specialized literature on these subjects is included in the bibliography. Greater consideration is given to the broader structures of governance within which students might participate to help solve these types of problems. Experiments with increased student involvement in campus governance already prevalent in the 1968-1971 period continue to change from the traditional model of participation as an educational experience to one of power delegated within separate jurisdictions, and from that to mutual participation in decision-making (10, 14-16, 32, 53, 87, 96, 120, 123, 134, 154, 179, 191).

Procedure

In this essay and literature review, each of the several sections introduces an important area of concern that should be taken into account in any inquiry into student rights and campus decision-making issues. Each area is distinct, but generically overlaps the others. In large part, the expository sections cover the literature cited in the bibliography. These sections are intended to introduce and supplement the bibliography. Items in the bibliography that are not extensively covered in the narrative are annotated in the bibliography. They have also been indexed, with asterisks marking items of special importance. This procedure has enabled the writer to focus on the legal and philosophical issues raised in the court cases and the literature, to place these in perspective, and to summarize pertinent administrative guidelines, referring to items of particular interest by number. *The narrative does not attempt to provide legal advice; for this, appropriate professional counsel must be sought.*

Outline

The discussion begins with a brief view of student activism as a primary condition of attention to student rights in higher education, and moves immediately to an initial consideration of approaches made to student discipline issues by the courts. These reflections help focus the discussion on basic ideas concerning law and morality in an open society, following which there is an examination of student activism and the varieties of institutional response. Then legal, institutional, and moral rights are distinguished and interrelated as a transition to viewing relations between administration and the law in current campus situations. Examples are taken from recent court cases. The concluding guidelines are based on the previous discussion and other literature not considered in the narrative.

Student Activism and the Courts

Activism Today

Student activism today is more diverse, lower-keyed, and more sophisticated than in the 1960's (293). The formation of numerous new state, multicampus, and national student organizations in the United States since that time came about more quietly, and harbingers more persistent and effective modes of influence (74). Lacking an issue to rally around, like the Viet Nam War once provided, student activists are exerting their efforts over a wide range of concerns and through a variety of social experiments. Mass demonstrations are still held, especially on bread-and-butter issues; but these, like the quieter activities, rarely command the attention of the national press. Nor have any systematic studies or surveys on such activities been done in the 1970's. In recent overviews, both Kellams (74) and Semas (293) have shown that there are additional major areas of student interest: student lobbying is on the rise; Public Interest Research Groups (PIRGs) supported by student fees are flourishing in several states; consumer unions and cooperatives have spread; and students in increasing numbers are participating in governance decisions. Moreover, the 1974-1976 Research Project on Student and Collective Bargaining studied the development of several evolving patterns of student participation in faculty bargaining, which are now supported by enabling legislation in Maine, Montana, and Oregon (82, 89, 287). Also, students have been active in working for political candidates and in voter registration drives, and they are to be found everywhere working for social causes, e.g. those of minorities and women. Local grievances that used to cause a widespread furor now are being handled in newly organized campus judicial systems (55a) and in the courts (64, 88, 221, 237).

Data are not available to assess what percentage of students are "activists" in the ways indicated above. The number has always been small; yet these types of indicators suggest the possibility, given a supportive political atmosphere or more troublesome social crises in the late 1970's and early 1980's, that a new era of intensive student activism is emerging.

If the campus remains a major arena for expression of student activism, as in the 1960's, student rights issues will also intensify. This will occur chiefly because rights claims will be newly asserted

in areas of decisionmaking, such as institutional planning and collective bargaining, and because old administrative structures will not be adequate to deal with value-laden questions. In any case, administrators, along with other members of the campus community, are bound to have some concern with these issues, either as a matter of principle or as a matter of personal necessity. Since every American student of 18 is now a citizen with full voting rights (178, 184), questions arise about what citizens' rights they now possess (44, 64, 73, 286) and about what role the courts can be expected to play in student rights issues (64, 237).

Judicial Approaches

Circuit Judge Webster has summarized the courts' current and traditional tendency not to intervene in school affairs, except to protect certain procedural rights under the 14th amendment to the U.S. Constitution—though when pressed the courts have made guarded decisions on other constitutional rights. This statement, in his July 15, 1975 decision in *Greenhill* v. *Bailey*, 519 F 2d 5 (1975), is where Judge Webster cites several of the more influential cases:

> It is true that courts will ordinarily defer to the broad discretion vested in public school officials and will rarely review an educational institution's evaluation of the academic performance of its students. *E.g., Keys* v. *Sawyer*, 353 F.Supp. 936 (S.D.Tex. 1973); *Connelly* v. *University of Vermont and State Agricultural College*, 244 F.Supp. 156 (D.Vt. 1965); *Foley* v. *Benedict*, 122 Tex. 193, 55 S.W.2d 805 (1932); see *Brookins* v. *Bonnell*, 362 F.Supp. 379 (E.D.Pa. 1973); *Wong* v. *Regents of the University of California*, 15 Cal. App.3d 823, 93 Cal.Rptr. 502 (1971), and cases discussed therein.

In matters of education and institutional life, "broad discretion" among the school authorities has been carefully preserved in the court decisions referred to.

Judge Webster continues:

> Notwithstanding this customary "hands-off" policy, judicial intervention in school affairs regularly occurs when a state educational institution acts to deprive an individual of a significant interest in either liberty or property. *E.g., Goss* v. *Lopez*, 419 U.S. 565, 95 S.Ct.729, 42 L.Ed.2d 725 (1975); *Perry* v. *Sindermann*, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972); *Wellner* v. *Minnesota State Junior College Board*, 487 F.2d 153 (8th Cir. 1973).

No doubt Judge Webster chose to emphasize individual rights of "liberty or property" because most school and college cases that deal directly with constitutional rights refer in some fashion to the first or

the fourth amendment, unless strictly procedural issues are raised. The first amendment protects rights of free speech, expression, publication, association, and attendant rights of privacy. The fourth amendment protects against other invasions of privacy, of one's property (from *proprius*, "one's own"), by unreasonable search and seizure. Arthur R. Miller's noted exposé, *The Assault on Privacy: Computers, Data Banks and Dossiers* (319), for example, relates chiefly to first amendment issues, though several amendments may be construed as dealing with matters of privacy.

In school contexts, court decisions have often gone not directly to the substance of such rights but rather have focused on the duty imposed on the state by the 14th amendment to provide "due process" and "equal" protection of the laws." Such "state action" (230) is not, however, to be directed toward private acts of individuals, which explains why student discipline issues in private colleges and universities have scarcely been addressed by the courts (21, 118, 139, 152, 153, 230). Thus, the following final portion of Judge Webster's statement refers chiefly to public institutions:

> It is well established that when a deprivation occurs the procedural safeguards embodied in the Fourteenth Amendment are called into play, and courts will not hesitate to require that the affetced individual be accorded such protection. *Id.; Board of Regents* v. *Roth*, 408 U.S. 564, 92 S.Ct. 2701, 33 L.E.d.2d 548 (1972).

The principal focus of court decisions relating to student rights, as with many other areas of campus life, has been on issues of procedural rights, such as the right to proper notice and the right to a fairly conducted hearing.

Case Law

Because case law is in a state of flux, William T. O'Hara and John G. Hill Jr. (1972) rightly caution that careful attention should be paid to the context of cases being scrutinized and cognizance taken of new factors that may be taken into consideration, as well as new decisions, and even reversals of decisions (54). O'Hara and Hill's use of two-to-four cases for each of several problem areas essentially serves to illustrate types of problems, trends, and possibilities, and does not contain hard and fast guidelines. There is no reason to change this approach today.

The widespread misuse of one landmark case—*Dixon* v. *Alabama State Board of Education*, 294 F. 2d 150 (5th Cir. 1961), *cert. denied*, 286 U.S. 930 (1961)—presents an instructive reminder of the care

that should be taken to examine the very different sets of factors in various campus contexts. The pressure to accord the fullest possible procedural rights to students dates from this 1961 student discipline case (55, 55a, 57, 214, 219). A close look at the record reveals, however, that neither in *Dixon* nor in subsequent decisions have the courts sought either to determine all the elements that might go into disciplinary proceedings or to specify what substantive rights are being upheld in requiring due process; nor does the total case law indicate all that should be done. Such decisions are left to the institutions. *Dixon* was specifically addressed to an explusion resulting from civil rights issues in a public institution and was a two-to-one decision. Subsequent cases have affirmed *Dixon* and have acted to fill out the law in some areas. For example, the oft-cited student demonstration decision, *Esteban* v. *Central Missouri State College*, 277 F. Supp. 649 (1967), purported to build on *Dixon* and added a number of procedural requirements. There, student discipline was treated on a criminal model versus a much looser civil model normally applied to such cases. Most of the chief features common to criminal trials were included, such as the presence of counsel and examination of witnesses. Nevertheless, another decision, by which all judges in the District Court for the Western District of Missouri reviewed *Esteban*, softened the list considerably: *General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Education*, 45 F.R.D. 133 (1968), as did the superseding *Esteban* case of 1968, 290 F. Supp. 622 (1968), *aff'd* 415 F. 2d 1077 (1969). (The most important sections of the *General Order* are in 64, pp. 3-7.)

Thomas C. Fischer, Antioch School of Law, has succinctly displayed how these modes of adjustment and restraint have operated in the courts since *Dixon* (55a, pp. 5-24). He notes, for example, that the *French* v. *Bashful* decision, 303 F. Supp. (1969), by the U.S. District Court in a Southern University in New Orleans case, rules that much less due process is warranted students facing penalties such as probation or censure than those facing explusion or suspension. Also, he comments that in another frequently cited case, *Tinker* v. *Des Moines Independent Community School District*, 393 U.S. 503 (1969), the Supreme Court found that wearing black armbands in protest was protected under the first amendment, in that these students did not "materially and substantially" disrupt the school. It thus left open the possibility of students not being protected if they should use speech or other action that does materially and substantially disrupt

a school. Moreover, the conditions of the case were special: there was no speech and no militancy; the attempt had been made to restrain the students before the act rather than during it or afterwards; and it occurred in a public school. Any change in these conditions could well have brought about a different decision. Historically, *Tinker* is perhaps even more significant because previously almost all challenges to the disciplinary authority of public school officials had been taken to state courts (66, p. 137). Decisions of the higher courts carry more weight.

French v. *Bashful* has also been cited as establishing the student's right to counsel in disciplinary proceedings (27, 128). Fischer notes, to the contrary, that in that case the court required the defendant's retained counsel to be admitted because a third-year law student was arguing for the prosecution and this constituted an equal balance. He infers that an institution would not be required to admit counsel for the defendant if it merely has counsel assistance in the deliberative process (before the hearing board) and not in the prosecution.

As Fischer also suggests (55a, p. 21), since the second *Esteban* case in 1968, "substantial evidence" has been the test normally applied by the courts regarding rules of evidence in student disciplinary hearings. This means evidence as taken from the total record, not a mere scintilla, and not "beyond a reasonable doubt" (a test familiar in criminal proceedings), but such that a reasonable person might accept it as adequate to support a conclusion. Even where their requirements are rather firmly established, with this test the courts have allowed great procedural latitude.

Fundamentally, the courts have assumed the continuing development of democratic institutions within an open society. They have chosen to adopt a modest position, knowing that ultimately their role is to protect the rights of citizens and to support social and institutional reform, once begun, but not to solve social and institutional problems. They know, moreover, that judiciary edicts are powerless to cure or to deter where the citizenry in question is unwilling, unable, or too embroiled in controversy to agree. Thus, the campus is thrown back upon itself. As John Dewey argued throughout his long career as a philosopher and educator, the growth of educational and democratic institutions depends on a mutuality of concern (303).

The Open Society

Traditions of academic freedom support the contemporary quest for on open society (320) and are defined by that quest. A truly open society may be said to be one that has a minimum of secrecy in public affairs, a minimum of dishonesty in public communication, a minimum restriction of economic and educational opportunity to any member, a minimum of doctrinaire public policy, and a minimum of political control over social behavior—if all are made consistent with a maximum of social commitment to individual rights.

Like most definitions, this one does not solve any practical problems. It does begin to indicate, however, how complex the major problems we face actually are, and it does suggest some modes of approaching them. On campus, the notion of an open society presents us with ideals of communal involvement rather than paternalistic, authoritarian rule, ideals of maturing responsibility for and toward individual freedom rather than childish dependence, ideals of shared decision-making, of open, honest, and fair dealings with conflict, and of concern for each other's good. To make the campus an advance post of the open society means recognizing that people have immediate self-interests which prompt them to act in certain ways; but it also implies that every group of participants will strive for a more mature, rational regard for self and others in their common life. The way ethical values find expression in institutions of higher education today will undoubtedly have profound effects on leadership styles in tomorrow's society, since youth emulate their elders. This is one

reason why the way student rights issues are treated is important far out of proportion to their small incidence.

Public Problems

What can today's campus leaders do?

Many of the crucial problems we face in our society arise from the need for a high degree of social organization and political control so that creative new opportunities will open up for individuals, for diverse segments of the society, and for the society as a whole—not only American but worldwide (300, 317, 322, 325). Yet these complex social and political arrangements also have regressive effects. In microcosm, the same is true on campus (22, 28, 32), and student activism often has provided a sensitive reading [illegible]where things have gone wrong (35, 39, 43, 70, 87). Ironically, reformers are still having to spend their energies on securing basic freedoms by legal and external or sociopolitical means at the very moment in history when humane survival would seem to depend very largely upon the moral and internal or institutional commitments of our leaders (309, 317, 318). Nowhere would the effects seem to be more telling than in our colleges and universities.

The growth of public morality unmistakably draws from the directives and constraints of law, just as law in part emerges out of conventional morality and in part protects it. Public morality fails when the law becomes the sole determinant of conscience (67, p. 110; 301, 303, 310, 312). For example, suppose that administrative decisions on campus were made simply on the basis of laws and regulations. This arrangement would tend to support a chiefly prudential, pre-moral way of dealing with problems, because legal conditions can never be sufficiently broad, rational, specific, or complex to cover every circumstance. One would again and again be thrown back to questions of competing interests; and one's principal aim probably would be to see to it that a particular set of interests wins. In sum, although we require the guiding structure of law to order our affairs, we need morality even more. Within a pluralistic society, this does not entail adopting a particular set of moral principles, although this must occur to some degree; but it does require being able to take a moral point of view (295, 297, 307).

When the moral context is taken seriously, then knowing and using the law takes on greater rather than less significance. Public employment bargaining, for example, under certain conditions is in several states either mandated or permitted by law (90, ch. 22). In a few of these states, elaborate provisions are made to assure, among other

things, that constitutional rights are observed, that practices are fair, and that there is recourse to outside experts when discussions bog down. The laws and regulations governing collective bargaining are essential to its success; however, they can only provide some structure and guidelines for doing this work, and students entering into faculty bargaining have quickly learned this (89). The laws and regulations cannot prescribe how relationships will develop across the table or between bargaining sessions. Yet precisely these relationships, especially conceived in moral terms, are what make the bargaining work well as a method of using conflict to reach agreement (90, ch. 1). In this instance, the law serves humane ends; but it is not enough to assure morally appropriate action (311). The same is true of administrative procedures established to secure student rights and to deal with conflicts arising from competing claims (204).

Two Kinds of Covenant

Adherence to democratic process within an open society, then, involves the continuing development of a moral perspective within its institutions. This commitment further requires a particular kind of covenant or contract (222). The difference this makes is strikingly illustrated by ideas of covenant arising from the late Bronze Age that still have noticeable repercussions upon social arrangements today. Two principal ideas of "covenant" had arisen by the twelfth century B.C. in the ancient Near East (315, 316). Briefly described, one type of covenant was dictated by the conquerer or king, enforced by coercion, and sealed by detailed legalistic instruments or decrees. Implicity or explicity, such contracts are not unknown in higher education today, particularly in sensitive student rights areas (130, 156, 169, 176, 180, 228, 235, 263, 268). The other was developed to its high point among the people of Israel and centered on the rule of laws that were very simply and broadly stated in the Decalogue plus a few others. This second type of covenant depended chiefly on a communal relationship of mutual commitment and trust, one similar to the "*de communitatis* approach" to determining campus institutional authority, which was recently recommended by Robert Laudicina and Joseph L. Tramutola, Jr. (67, pp. 8-9), and to the humanistic-versus-production model proposed by Terry O'Banion (191).

Reliance upon the communal type of covenant enabled premonarchical Israel to grow by the 10th century B.C. from a few hundred persons escaping bondage in Egypt to a free, diverse, and thriving international community, one that incorporated people from every conceivable background into its common life. Israel soon experienced

the ossifying of communal spirit through dependence on administrative authority and on an increasingly detailed letter of the law. Indeed, the dilemma was virtually inescapable, as is now true in our own, more complex society—achieve clarity by adhering to the letter of the law or attain moral graciousness and trust by understanding the spirit of the law. Both are necessary, although occasionally they may conflict.

To break the horns of the dilemma each process must qualify the other. Legal clarity achieved at the expense of the moral spirit that pervades the basic premises of either constitutional or institutional rights becomes an unwholesome burden. Rhetorical subscription to rights without attention to the details tends to subvert those very rights. Traditionally, student activists often have been highly sensitive to these two extremes (43, 126).

The Coming New Era in Student Activism

Developmental and Societal Tasks

According to the studies, what irks activist students most? (E.g. 11, 21, 22, 25, 35, 39, 43, 70, 77, 173, 292, 293.) To begin with, they are incensed at authoritarian procedures, impersonal bureaucracy, failures to uphold ideals of freedom and justice and equality, secrecy and dishonesty in public affairs, political incapacity to deal with global problems, the military-industrial complex, elitist control of technology, lack of respect for individual rights, cynicism, and avoidance of fairness and due process. Furthermore, such students take offense at adult condescension and indifference, adult intolerance of experimentation, diversity, and dissent, and adult lack of commitment to the welfare of the young, the poor, and the oppressed. In addition, they are indignant about insensitivity to value issues, bad teaching, breach of promise, refusal to discuss, labeling, the attribution of guilt by association, flagrant use of ad hominem arguments, refusal to grant a second chance, and failure to include students in some way in decision-making that closely affects their lives.

Most of these things disturb older citizens too (given that most students are young adults). Students' displeasure with institutional or societal inadequacies becomes particularly acute because these things impinge on their special developmental needs to attain a sense of individual identity, recognition in their own right, a set of shared commitments, and a well-grounded feeling of hope for the future (296, 304, 305, 314, 321, 324). Pondering the relationships between these personal needs and external inadequacies leads us to this observation: the more democratic a society has become, the more essential it is for its youth to accomplish precisely these developmental tasks. This is absolutely necessary if the society is to thrive, perhaps if it is even to survive as a truly humane society.

Student activism from 1964 to 1970 was highlighted by mass demonstrations led chiefly by youth of the new left. It centered on issues of civil rights, war and peace, ecology, and economic injustice. During the Nixon years it came to a lull. This lull occurred partly because of the profound disillusionment and cynicism of student leaders, partly because of overall political and institutional intransigence on many of the key issues, partly because substantial gains had been

made, partly because the various movements were working at cross-purposes, partly because internal bickering had destroyed many activist groups once the initial coalescing crises had died down, partly because less dramatic tactics for bringing about social change were spreading, and partly because inspiration among their elders was not of a quality to incite crusading action (22, 43, 70, 312).

Grounds for Unrest

A new era of student activism appears to be in the offing for the late 1970's and after. Many of the chief developmental and societal roots will be the same as those in the 1960's. Current indicators suggest that the occasions and the mix of styles will be markedly different from those of the 1960's. In brief, the key occasions will include (1) the increasing sense of interlocking global crises focused on energy, population, food, pollution, and natural resources; (2) growing public unrest over inattention to issues of basic rights in government, this time involving far greater numbers of women; (3) dismay over effective but unexamined relations between members of research institutions and government and industry, particularly in areas touching consumer interests, education and social welfare, and planning, nuclear power, and biochemical research; (4) an increased realization that procedural due-process rights and substantive rights (particularly regarding free speech and privacy) already upheld in the courts need new organizational structures on campus, and that recognition of other substantive rights can be similarly fought for; (5) a rising opposition to prejudicial discrimination of all kinds; (6) with the continued growth of faculty collective bargaining, an increased anger at signs of faculty self-interest in opposition to student interests; (7) with further financial exigencies, a similar anger at single-handed moves by boards and administrations on policies that closely affect students' lives (70, 71, 74-76, 81, 85, 89, 90, 281-283, 288, 292, 293, 317).

In response, student leaders will seek out similarly concerned or disaffected people, both at their institutions and in society, to develop strategies of protest, education, political pressure, and negotiation. By and large, administrators have learned how to contain demonstrations and, if they wish, to ignore or defuse them. It is now student lore that if demonstrations are to have any effect, they must be accompanied by other strategies (62, 71, 75, 89, 248, 253, 254, 268, 287, 290, 292, 293). Far more sophisticated guidelines are now available for change agents than there had been in 1964 or 1970 (e.g. 300, 316, 322). These guidelines will be assiduously studied. At the

same time, some students, like their elders in similar situations, will fail to take advantage of the newer, historical learning and soft technology when their own special interests seem immediately threatened. This time these students will include a greater proportion from the new right. Any impetuous action will provide encouragement to fanatics and terrorists. Some authorities then will be tempted to treat all activists alike, unless they are curtailed or sanctioned by their peers, thus augmenting the spiral of oppression and unrest. In short, the current dream of campus quiescence is unfounded; however, the nightmare of violence need not be realized given the facilities available for institutional and social reform (43, 77, 87, 280, 288, 293, 318).

Modes of Response

What kinds of response to student activism and to student rights claims can be made? Three potentially complementary types can be distinguished: administrative, parental, and collegial. Administrative responses can be authoritarian, prudential, cooperative, or facilitative. In terms of our earlier discussion, the more emphasis placed on cooperative and facilitative styles, the more humanely and morally appropriate will be the administrative response to student rights claims (32, 53, 87, 96, 123). Similarly, the degree to which a parental response is construed as either condescending or merely controlling will be the degree to which it tends to be developmentally inappropriate and probably ineffectual. To the degree that it supports growth of mature, independent judgment and mutual participation among students at various stages of development—older or younger—it will be more properly responsive (304, 314). This approach lies worlds away from the old *in loco parentis* attitude, which built upon the image of American parents as rulers and constrainers rather than as facilitators of personal growth, independence, and social interaction (31, 126, 161, 168). By definition, the collegial response works when it is a mode of cooperation and facilitation, where students are regarded not just as consumers or relative beginners, but as partners in the academic enterprise (90, ch. 18; 96, 154). Partnership requires suitable levels of shared governance, open dialogue, an inclusive system of communication and evaluation, and the ability to resolve conflict in a context of mutual respect.

At present, the judiciary generally is supportive of collegial trends, especially through constitutional law. Nevertheless, because of the way the court views its role, its decisions have had indirect and limited impact on the formation of collegial styles. Improvement of

cooperative and facilitative group process skills has everything to do with progress in this area. It is a matter of conscience whether people will themselves support collegial values or wait for the courts to intervene.

Legal, Institutional, and Moral Rights

To develop some guidelines for administrative decisions on these matters, it is necessary first to consider what makes an issue a "rights" issue; then the current situation regarding student rights issues on campus can be usefully examined. This will make the rights issues spoken about in earlier sections more distinct and concrete.

After delineating a list of basic rights, subsequently reinforced by amendments to the U. S. Constitution, Article IX of the U. S. Bill of Rights states: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people" (302). It has become a generally acknowledged responsibility of public institutions not only (1) not to impede the exercise of certain rights but (2) to promote their recognition, (3) to maintain the necessary conditions that will enable the claims to be met, and (4) to provide opportunity for their further fulfillment. The distinct character of a public institution is revealed by the variety of responses it makes to valid claims that are or could be placed upon its services; the degree to which private institutions are truly private and manifest no public status or character is shown by their freedom to select among such claims and to respond selectively (21, pp. 171-179; 83, 118, 139, 152, 153, 160, 230, 243, 258).

Student Rights

At colleges and universities, the term "student rights" means (1) constitutional and other legal rights, (2) rights to participation within the institution, and (3) human rights. Sometimes it also means (4) the supposed right to special consideration as an "individual," which transcends even the high moral claim attached to human rights, and which may not, in the strict sense, be a right at all but a license or privilege. These categories are often misunderstood, confused, and collapsed into one idea. This is not surprising, since the subject of rights is complicated and hazy and is not always conducive to very rigorous thought.

To help clarify what some of the major practical issues concerning student rights may be, several statements will now be made about "rights" and brief explanations offered. Each of these statements is open to criticism. They reflect the investigations of many contemporary philosophers and legal scholars (e.g. 295, 297, 298, 301, 303,

306-308, 310-312), and present a cohesive, workable framework. At several points and with some modification, the discussion draws on Joel Feinberg's outstanding account of rights in his 1973 book, *Social Philosophy* (306).

Rights

A "right," in a meaning closely related to legal use, is a valid claim on others that entails the liberty either to act or not to act, to be treated or not to be treated in some particular way, given the requisite ability and opportunity. The "others" may be particular individuals, groups, members or representatives of society, or all human beings (including oneself).

One useful distinction of rights that cuts across the categories already drawn is between positive rights, rights accorded to other persons' positive actions, and negative rights, rights to other persons' omissions or forebearances. Usually positive rights relate to specific persons or agencies (*in personam* rights), while negative rights relate to anyone who might come along (*in rem* rights). For example, due process rights, are, for the most part, positive and *in personam* rights. Rights against interference with free speech or against search and seizure are, for the most part, negative and *in rem* rights. For an administrator to throw up his hands against a negative rights claim and say, with feigned hopelessness, "What can I do?" may be an inappropriate response. What is really being asked is that the administrator refrain from customary behavior, not to do but, at most, to undo. That is, the administrator's response would be formally proper, in the sense that nothing really can be done in a positive fashion; however, it would not suitably address the claim. This kind of response is maddening to students who are already disturbed by what they regard to be unjust action or neglect.

One may have claims that in terms of human relationships are important but do not qualify as "rights" because they are not valid claims; that is, they do not yet count as grounds for any specific obligation of others to oneself. In such instances, one has the "right to consideration" but not the "right to have one's specific claim met." In some counseling situations, where a student is found to have ambivalent feelings toward the institution, it might, for example, be useful to point out that the student is asking the institution to meet the student's valid general claims as an adult citizen, but desires it to meet claims in a parental and therefore institutionally invalid way. The student conceivably might have it both ways, but could be helped by understanding the difference.

Moral Rights—Human Rights

Some rights could be specifically stated within a code so that no exception could possibly be made to their claims. In this case, the right would be absolute by definition; that is, there are no exceptions. Some have held that human rights are absolute. Others, including the writer, hold that they all are prima facie rights—that is, irrefutably so on the face of it, *but* open to exception or modification in context—not absolute rights. This should not detract from their immense moral authority as ideal directives. A human right, in either case, is accorded to an individual simply by virtue of the fact that he or she is a human being, and in the light of some value or values placed upon human existence. Some have chosen the capacity to reason and/or to suffer and enjoy as the defining values; others have chosen more abstract values, such as "well-being" and "freedom"; still others have pointed instead to an ultimate attitude of "respect" not grounded in any other value.

Human rights, such as those enunciated in the United Nations' "Universal Declaration of Human Rights," are among the moral rights. Moral rights are not only valid claims, but must be justified with respect to right-making principles appropriate to the moral context (297, 298). The latter qualification leaves open the possibility that some of these right-making principles will themselves be moral and some nonmoral, for example, aesthetic. A person is moral or acts morally in his or her capacity as a human being, as a person in relation with another person or persons, as a person in a particular social relation or context, or as a person in a position of responsibility within the body politic—sometimes in all four capacities simultaneously. The moral context includes all four levels of rights and obligations, including some referred to oneself individually, quite apart from merely prudential considerations of self-interest. This view further implies that political contexts, whatever else they may hold, normally have moral elements within them and are not to be totally separated from moral contexts in the defining of rights and obligations.

Historically, as societies have grown more affluent and complex, lists of human rights appearing in official documents have gotten longer and more specific; in emphasis they have climbed progressively up the scale from personal to interpersonal to social to political relations. The United Nations' "Universal Declaration of Human Rights" (327) is the preeminent example of this progression in our own time. For example, among its thirty articles, the 1948 declaration states:

> Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality (Art. 22).
>
> (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace (Art. 26).

More recent statements of rights involving students, faculty, administrators, and trustees evince similar qualities (e.g. 18, 24, 26, 44, 83, 92). That is, they have contained or have moved toward more specific references to campus judiciaries and other institutional structures (social and political relations) as embodied in a given right and thus to be expected as a right. A further implication to be drawn from discussions of these rights and from the way they are worded is that they can be regarded as right on moral grounds—as the "decent" or humanly "proper" thing to do.

In short, the scope of moral obligations that are enjoined as ideals for all, beyond individual discretion, has grown enormously. The "Universal Declaration" movingly presents its list as "a common standard of achievement" and claims that "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized" (Art. 28). The declaration further holds it to be "essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law." This is the broadening moral atmosphere within which issues of "student rights" emerged in the 1960's, in the midst of the Viet Nam War.

Legal Rights

What are "legal rights," then? And how can "the rule of law" help to protect human rights and other moral rights on campus? Legal rights are a class of claim-rights, as defined above, that are recognized or conferred by the state. Often, though not always, some valid means of coercion or constraint are attached to encourage, induce, or otherwise lead to compliance. Legal rights do not necessarily con-

tain moral considerations or moral force; but they may do so and may be regarded as such. Under a rule of law, some liberties are to be curtailed so that others may be attained, but not arbitrarily or maliciously or irrationally. Reference must always be made to the law itself. Some legal scholars regard the law itself to have a moral basis (311). Others, on both sides of that issue, believe that in a democratic society the law is ultimately powerless without a moral framework. Both would hold that one tends to subvert the rule of law unless one seeks to fulfill the law morally and with the highest respect not for what one can "get away with" under the law, but for what one can "best achieve" through the law.

Only a small proportion of the interactions between people in a society or within an institution can normally be directly covered by the law, or perhaps should be. Thus, *to restrict "student rights" to "legal rights" is to deal with a relatively small, albeit important, part of what is at issue concerning student-institutional relations. For the most part, the rule of law provides a framework within which humans may pursue moral and other significant ends.*

Institutional Rights

Institutional rights are those that specifically refer to the purposes, rules, and regulations of an institution. They are like legal rights in every other respect and may include legal rights within their number. Sometimes a legal or institutional right is not interpreted or stated in such a way that one can tell what it entails or whether it conflicts with another such right or not. For example, the legal "right to an education" is a very broad statement, one on which it is difficult to get agreement as to meaning or intent. If we ask what other rights within a college it conflicts with, the answer is not immediately apparent. The "right to inspect one's file" is specific and therefore is easier to compare with any possibly conflicting rights (294). The "right to a hearing in face of suspension" actually comprises several specific procedural due process rights and possibly some general ones too (118, 210, 239, 245). The "right to participate in student elections" is a discretionary right, since the student is not obliged to act upon his right (110, 280). However, if the college does not provide any significant issues or responsibilities for students to have elections about, abrogation of a more nearly fundamental right may be implied, even though elections are permitted.

A legal system usually develops by adjusting conflicting claims in reference to specific statements or procedures. The same would be true of a rational institutional system. This process does not imply

that the rules will get increasingly narrower or that the procedures will become more rule-bound. To permit coed dorms, for instance, is not less specific than to prohibit them; in fact, it extends the boundaries of claims that can be made with respect to living arrangements. This example displays the broadening, enabling, liberating aspect of juridical principles. It also suggests why some scholars and practitioners have advised against setting up a highly complex set of rules for student disciplinary procedures (30, 55a; compare 237, 263). Moreover, with further experience, exceptions are employed to protect the meaning of the right, to extend it, or to alter it substantively.

The Academic Context

A great proportion of student rights decisions emerging from the courts have dealt with procedural rather than substantive rights. Procedural rights refer especially to due process and to equal protection under laws or regulations. Substantive rights refer to actions or positions, such as free speech or privacy, or to standards of fairness, which are a right due to one's humanity or to one's membership in a group or society as opposed to being merely a formal, procedural process. Apart from matters of free speech, privacy, the right to control one's personal appearance (e.g., have long hair), and the right to hear outside speakers, substantive issues have been difficult to adjudicate off campus (21, 34, 41, 45, 57, 64, 65, 69, 152, 153, 235, 237, 263).

As noted, the courts are reluctant to interfere in matters that fall within the domain of institutional or "academic" judgment, even where these matters might intersect with other interests of the state. Such reticence has been clearly evident with respect to faculty grievance cases when the state provides the arbitration (86; 326, chs. 9-10). The same reticence can be expected as students and others seek outside judgment on their campus grievances. This assessment is somewhat in the nature of a hope rather than a firm prediction; as more specific criteria emerge regarding what does and does not constitute academic judgment, there is a real possibility that legal provisions might get more specific and directive than is healthy (see Mendenhall 315, 316). Higher education institutions could readily bring about this condition by failing to handle conflicting claims in the open, collegial, and conciliatory manner appropriate to academic settings (67, 79, 88, 221).

The Current Situation: Administration and the Law

In terms of educational philosophy, administration refers not only to the way institutions are run and their policies are made but to any decisionmaking that affects structures, perspectives, and procedures brought to bear on their activities. Hired administrators are chiefly addressed here, because they are normally charged with ordering, directing, or facilitating administrative processes. Others share in that process in varying degrees, depending on what rights have been secured for them and in what domains. Consequently, in the following sketch of the current situation the term administrator may refer to faculty, students, and others, as well as to those whose principal work is administrative.

Several major cases are cited as prime examples of judicial thought on pertinent subjects over the past 10 years. In forming these accounts, the writer has often checked the incisive, lengthier briefs of D. Parker Young and Donald D. Gehring in their excellent basic casebook, *The College Student and the Courts* (64). A search through the national reporter system and other resources has revealed that virtually all significant cases beyond the state level have been briefed in this book and its supplements. A fine summary on *Student Discipline Systems in Higher Education,* prepared by Stanford Cazier in 1973 (57), provides an appropriate companion volume. Additional references to the considerable literature on student disciplinary procedure and related subjects are given in subsequent discussion.

Due Process

Section 1 of the 14th amendment to the U.S. Constitution (302, p. 1303) provides the basis for due process rights in student disciplinary procedures as well as for many other aspects of college law. It reads:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

A portion of the fifth amendment similarly reads, ". . . no person

may lose his life, liberty, or property, except by due process of law" (302, p. 1089).

Most higher education institutions now have more sophisticated disciplinary codes and procedures than were in force 10 years ago (263). In public institutions if these do not fully comply with constitutional due process rights recently clarified in the courts, a substantive matter is likely to be adjudicated in favor of the defendant. Those standards generally accord with civil proceedings rather than the stricter rules established for criminal proceedings. They include the right to receive formal notice of charges and to hear and present evidence, both within a reasonable time. Other features, such as having counsel present, confronting witnesses, calling friendly witnesses, and having a written record of the proceedings, were set forth for certain contexts in the first *Esteban* case and were further elaborated in other cases, with special reference to the 14th amendment (41, 57, 69, 153, 163, 194, 224, 258). Since 1969, these other features have gained a relatively low degree of support in the courts, though institutions have been encouraged to develop reasonable and fair procedures appropriate to educational settings.

General Perspective. In *Jenkins* v. *Louisiana State Board of Education,* 506 F. 2d 992 (1975), the U.S. Court of Appeals upheld suspension of five students at Grambling College, a tax-supported institution. The students had been notified by letter of a hearing wherein the following charges would be brought against them: inciting to riot, disturbing the peace, and criminal damage to public property. The students appealed the subsequent decision to suspend them to the Louisiana State Board of Education, which sustained that decision. Motions to enjoin their suspension and provide other relief were denied by the District Court. On further appeal, the U.S. Court of Appeals found that the students' constitutional rights had not been violated; that is, the campus regulations were clear, not vague or overly broad (105, 133), and "need not be drawn with the same precision as criminal codes." Likewise, notice was sufficient and "need not be drawn with the precision of a criminal indictment." Further, the students' speech and actions were not protected by the first amendment, in that they "resulted in a material disruption of the campus and of the rights of others." Finally, the hearing board was not disqualified as biased simply by virtue of its being appointed by the president, comprised of employees of the college, or having participated in the initial investigation of the incident.

Adequate Hearing, Substantial Evidence Rule. In *Slaughter* v. *Brigham Young University,* 514 F. 2d 622 (1975), the U.S. Court of

Appeals registered the following important opinions on adequacy of hearings and on proper evidence:

> It must be held that there was an adequate hearing on the charge with a meaningful opportunity given to plaintiff to participate, to present his position, and to hear the witnesses presenting the facts they had knowledge of. We hold that these proceedings met the requirements of the constitutional procedural due process doctrine as it is presently applied to public universities. It is not necessary under these circumstances to draw any distinction, if there be any, between the requirements in this regard for private and for public institutions.
>
> . . . if the regulations concerned are reasonable; if they are known to the student or should have been; if the proceedings are before the appropriate persons with authority to act, to find facts, or to make recommendations; and if procedural due process was accorded the student, then the findings when supported by substantial evidence must be accorded some presumption of correctness. The adequacy of the procedure plus the substantial evidence element constitute the basis and the record to test whether the action was arbitrary.

The two criteria of "procedural adequacy" and of "substantial evidence" have been crucial in most court decisions in this area. Exceptions are noted below.

Specificity of Rules. The degree of specificity necessary in college rules is still being worked out case by case. One general criterion seems to be the ability of the student to prepare an adequate defense when charged with breaking a rule. In *Soglin* v. *Kauffman,* 418 F. 2d 163 (1969), the U.S. Court of Appeals held that the University of Wisconsin's Dean of Students' use of "misconduct" as a standard for disciplinary action was vague and overly broad. The court stated, "the ability to punish 'misconduct' *per se* affords no safeguards against the imposition of disciplinary proceedings overreaching permissible limits and penalizing activities which are free from any taint of impropriety." It further asserted that "expulsion and prolonged suspension may not be imposed simply on the basis of allegations of 'misconduct' without reference to any preexisting rule which supplies an adequate guide."

In *White* v. *Knowlton,* 361 F. Supp. 445 (1973), the U.S. District Court did not find the United States Military Academy's honor code—namely, "A cadet will not lie, cheat or steal nor tolerate those who do"—unconstitutionally vague.

The U. S. District Court in *Marin* v. *University of Puerto Rico,* 377 F. Supp. 613 (1974), confirmed the university's rule not to permit students "to interrupt, hinder, or disturb the regular tasks of the University or the holding of duly authorized activities." But the

following regulations, among others, were found in violation of the students' constitutional rights:

> Art. 3C (2) (a)—The holding of pickets, marches, meetings and other demonstrations at any place within the University will require prior notification and consultation of the Chancellor . . . [or his designee] who will approve the place, hour and day in which these acts will be carried out in such a way that they will not interrupt the educational tasks and the good order of the University.
>
> Art. 3C (2)(b)—The acts referred to [above] will be held "in such a manner" that they will not affect the normal functioning of the University's operations and proceedings.

Whether dismissal for wearing a Mickey Mouse hat instead of a mortarboard at his graduation exercises deprived a student of his rights of free expression was never decided in *Yench* v. *Stockmar*, 483 F. 2d 820 (1973). The significant finding was that he had acquiesced to his probationary status, which resulted from previous disciplinary proceedings, even though they did not strictly follow procedures set forth at the Colorado School of Mines, and he was therefore subject to the sanctions given. The United States Court of Appeals, which tried the case, saw the disciplinary meetings to which the student later objected as "part of the educational process" and "not comparable to criminal proceedings." Since he had made no attempt to use or request the published procedures, he could not later object to the conditions of his probation.

Finally, in *Edwards* v. *Board of Regents of Northwest Missouri State University*, 397 F. Supp. 822 (1975), the U.S. District Court noted that although there had been a deviation from university rules in the holding of a *de novo* hearing before the Board of Regents, this did not in itself result in any deprivation of the student's rights to due process in an explusion case, and it cited the 1969 *General Order*, issued in connection with the *Esteban* cases, to the effect "that some degree of breadth is necessary in student conduct regulations, and that they are not to be compared with criminal statutes."

Self-incrimination and Double Jeopardy. Self-incrimination and double jeopardy cases, under the fifth amendment, have clarified the fact that while a student's testimony in a disciplinary hearing held in a public institution might be excluded in a subsequent criminal proceeding, these are separate jurisdictions and do not constitute double jeopardy (41, p. 127f.; 259).

Notice and Hearing. As the judge noted in *Yench* v. *Stockmar*, 483 F. 2d 820 (1973), "every disciplinary event cannot give rise to a constitutional question and a right to have the federal courts inter-

vene." The following summary by D. Parker Young and Donald D. Gehring of what has actually been worked out in the federal courts concisely states the nature of requirements for proper written notice and hearing in cases of suspension and explusion as of mid-1973 (64, p. 17).* On the general terms, supportive references are made to *Dixon* and the first *Esteban* case, and to *Knight* v. *State Board of Education*, 200 F. Supp. 174 (1961), a Tennessee A & I State University case heard by the U.S. District Court. Young and Gehring wrote:

> Students at a tax-supported institution or at an institution where state action is involved are constitutionally guaranteed the right to notice and hearing prior to suspension or expulsion. Procedural due process requires that students be given a written notice of the specific charges against them, the time and place of hearing, evidence which will be presented against them, and the possible action to be taken against them if the charges are supported. The notice should be provided to the student in enough time prior to the hearing to allow the student to prepare a defense.
>
> The hearing itself should provide the student an opportunity to present his defense and present witnesses in support of his case. There is no general requirement at this time that the student be warned against self-incrimination or be permitted to cross-examine witnesses. There is also no requirement that the hearing be open to the public or members of the college community. If the hearing is not before the highest administrative authority at the institution, the student is entitled to appeal the decision to that authority. The hearing is not intended to be a full blown adversary proceeding, but simply a fair and ample opportunity for both sides to present the facts.

Several other cases show how this general position has taken shape in specific terms. In *Wright* v. *Texas Southern University*, 392 F. 2d 728 (1968), the U.S. Court of Appeals held that due process was not denied, in view of a university regulation requiring students to notify of any change of address if notices were sent by certified mail but returned undelivered. In *Sill* v. *Pennsylvania State University*, 462 F. 2d 463 (1972), the U.S. Court of Appeals ruled that the Board of Trustees had the right to appoint "a distinguished group of private citizens" as a hearing board, and did not thereby violate the constitutional rights of students. In *Winnick* v. *Manning*, 460 F. 2d 545 (1972), a University of Connecticut case, the U.S. Court of Appeals ruled that "the mere fact that the decision maker in a disciplinary hearing is also an administrative officer of the University does not in itself violate the dictates of due process."

In *Blanton* v. *State University of New York*, 489 F. 2d 377 (1973), the U.S. Court of Appeals held that students are not denied due

*These still held in 1976.

process if the dean—who had asked protesting students to identify themselves and to leave the scene of protest—functions as a "non-voting coordinator" at the subsequent hearing. The court further held that in this case the students were not entitled as a matter of right to confront and cross-examine their accusers, though it did leave the question open regarding other circumstances, and stated that where suspension of a student turns on questions of credibility, "cross-examination of witnesses might be essential to a fair hearing." In *Becker* v. *Oswald*, 360 F. Supp. 1131 (1973), the U.S. District Court affirmed Pennsylvania State University's assertion that where it is not shown that institutional appeal procedures are inadequate or that an appeal through them would be futile, a student must have exhausted available administrative remedies in a disciplinary case before making suit in court.

Later court decisions have sustained these precedents.

Right to Counsel. Defendants in several cases have claimed the right, which is protected under the sixth amendment for criminal trials, of having "the assistance of counsel" (302, p. 1195). This has regularly been denied in instances where the institution does not proceed through counsel, for example, in three U.S. District Court decisions: *Barker* v. *Hardway*, 283 F. Supp. 228 (1968); *Haynes* v. *Dallas County Junior College District*, 386 F. Supp. 208 (1974); and in *Garshman* v. *Pennsylvania State University*, 395 F. Supp. 912 (1975).

Private Institutions

A thoughtful 1975 Supreme Court decision in New York, *Kwiatowski* v. *Ithaca College*, 368 N.Y.S. 2d 973 (1975), affirmed a range of due process rights established for public colleges in a private college disciplinary proceeding; they support the administration on the grounds that its disciplinary procedures were fair and reasonable and were conformed to in the particular case. Nevertheless, private colleges and universities are autonomous to a high degree compared with their public counterparts, since implications of control through "state action" are strictly bound (230, 243). Thus, their practices often do not comply with the more elaborate constitutional standards (69, 258).

The state action principle—which recognizes that the relationship between students and private institutions is contractual, and that due process is not required by law unless some state agency is nonetheless involved in its activities—has been tested only a few times. So far, receiving public funds or tax exemptions has not been in-

terpreted as state action by the courts. However, increasing governmental regulation and financial support extended to private institutions could eventually place their members within the full protection of constitutional law now provided those in public institutions.

First Amendment Rights

The first amendment of the U.S. Constitution reads (302, p. 911):

> Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

What external controls may be directed to first amendment concerns? Great internal latitude remains because the courts have been extremely cautious about encroaching upon academic judgment. Generally, the courts have supported first amendment rights in such a way as to enable students to assemble for a wide range of purposes and to conduct peaceful demonstrations, to voice their convictions openly, in both verbal and symbolic ways, to have organizations offically recognized without discrimination, to bring outside speakers of choice to campus, to wear what they please within the bounds of civic decency, to grow long hair, to publish ideas freely in campus newspapers, and to distribute propaganda (21, 24, 157, 205, 231, 250, 254). Nevertheless, the institution has the right to expect compliance with certain rules (e.g., proper notice of meetings), to make regulations protecting its members against interference of their proper functions (e.g., no blocking access to buildings or destruction of property or disturbing others' free-speech rights), to restrict who may use campus facilities (e.g., to deny recognition to any group holding aims inimical to the proper goals of the college, such as violent overthrow of established institutions), and to specify corresponding responsibilities (157, 205, 206, 231, 247, 250, 254).

Freedom of Speech and Expression. In its review of a high school case, *Tinker*, v. *Des Moines Independent Community School District*, 393 U.S. 503 (1969), the U.S. Supreme court ruled: "In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views." Students had worn black armbands in protest against a heatedly debated public policy. The administration feared disruption of classes, ordered the students to stop and, upon their refusal, suspended them. This was a key decision; but neither this nor

any subsequent decision in this area is sufficient to curtail more subtle administrative restrictions of free-speech rights, though several broadly defined restrictions have been set by the courts since *Tinker*.

For example, in *Papish* v. *Board of Curators of University of Missouri*, 410 U.S. 667 (1973), the U.S. Supreme Court ruled that ". . . the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of 'convention of decency'." This view has been sustained in a series of subsequent cases. In *Thonen* v. *Jenkins*, 491 F. 2d 722 (1973), the U. S. Court of Appeals stated that an East Carolina University student could not be suspended on the grounds that he had written an open letter to the president of the university critical of certain regulations and describing the president with a vulgar word. The reason: ". . . no disturbances or disorders of interference in connection with any school or school related function occurred as a result of the printing of the letter." In *Board of Supervisors of Louisiana State University* v. *Lewark*, 381 So. 2d 706 (1973), on the principle that "limited regulation" of first amendment freedoms is necessary to "general comfort and convenience" in an educational setting, the Supreme Court of Louisiana supported the university's rule requiring prior approval before literature and other materials may be sold on campus.

It is through such small adjustments and argued differences of principle, directed to varying contexts, that case law develops, bit by bit. The advances in clarity and direction are more readily shown with respect to demonstrations, off-campus speakers, and student newspapers than with respect to other free-speech matters, which are often more nearly regulated within the traditions of academic freedom.

Demonstrations. Numerous cases have dealt with mass student demonstrations. The deciding criteria have generally been the same as those for most other first amendment cases: that the expressions be left free and without prior restraint, but not so as to interfere with the rights of others, to destroy property, or to materially disrupt the educational process by blocking entrances or offices or in other ways. Thus, in *Hammond* v. *South Carolina State College*, 272 F. Supp. 947 (1967), the U. S. District Court held that a rule prohibiting "parades, celebrations and demonstrations" without permission from college officials constitutes prior restraint and is incompatible with first amendment guarantees. A student may be suspended for violating any of the criteria mentioned above by his actions. For example, in *Buttny* v. *Smiley*, 281 F. Supp. 280 (1968), a

U. S. District Court ruled that suspension was appropriate for blocking of an entrance at the University of Colorado; and in *Zanders* v. *Louisiana State Board of Education*, 281 F. Supp. 747 (1968), the U. S. District Court issued a similar judgment in a Grambling College case. Similar results occurred in *Evers* v. *Birdsong*, 287 F. Supp. 900 (1968), in a U. S. District Court ruling on disorderly and distructive incidents at Alcorn A & M College, Mississippi, and in *Esteban* v. *Central Missouri State College*, 290 F. Supp. 622 (1968), a U. S. District Court ruling later upheld by the U. S. Court of Appeals in *Esteban* v. *Central Missouri State College*, 415 F. 2d 1077 (1969).

In one instance, however, suspension of students for planning and participating in a demonstration that led to destruction of university property was not upheld by the U. S. District Court, in view of the fact that "adequate substantial evidence" was lacking to show either that the demonstration that actually occurred was planned by the plaintiffs or that they personally participated in destruction of property. This was in *Scroggin* v. *Lincoln University*, 291 F. Supp. 161 (1968). Moreover, in *Saunders* v. *Virginia Polytechnic Institute*, 417 F. 2d 1127 (1969), the U. S. Court of Appeals found that the institution was at fault in denying readmission to a student solely because he had violated school policy by participating in a peaceful and orderly demonstration, and that the policy itself violated students' constitutional rights.

In *Siegel* v. *Regents of the University of California*, 308 F. Supp. 832 (1970), the U. S. District Court approved probation of a student and restriction of his participation in extracurricular activities, inincluding presidency of the Associated Students, of which he was president-elect, because he had in "a distinct, affirmative verbal act" incited others to exert destructive force.

Rules on holding campus demonstrations were found constitutional in three distinctive cases. In *Bayless* v. *Martine*, 430 F. 2d 873 (1970), the U. S. Court of Appeals regarded as valid a rule at Southwest Texas State University limiting the time and location of campus meetings and requiring reservations for use of a demonstration area at least 48 hours in advance. In *Sword* v. *Fox*, 446 F. 2d 1091 (1971), the U. S. Court of Appeals affirmed a rule forbidding demonstrations inside any building or at the location of fire hydrants but permitting them in other areas on 48-hour advance notice, this at Madison College, Virginia. In *Smith* v. *Ellington*, 334 F. Supp. 90 (1971), a University of Tennessee case, the U. S. District Court further upheld a rule limiting use of campus facilities to university

people, invitees, visitors, and guests, except for public events, and requiring persons on campus to show identification.

From the late 1960's on, there has been little change in the nature and grounds of such decisions, as may be seen, for example, in *Haynes* v. *Dallas County Junior College District,* 386 F. Supp. 208 (1974), where the U. S. District Court approved suspension of students for impeding access to classrooms and to the college bookstore at El Centro Junior College, Texas. In fact, the number of such cases went down drastically after 1971.

Off-Campus Speakers. In the heyday of student protest, several court decisions indicated that speakers may be banned from campus only within very narrow limits. The underlying principles have been protection against prior restraint on free speech and recognition of the inadequacy of vague and overly broad prohibitions. In *Stacy* v. *Williams,* 306 F. Supp. 936 (1969), for example, the U. S. District Court specifically cited the criterion of preventing a "clear and present danger to the institution's orderly operation" by the speaker's advocacy of certain actions. Classes of such actions, along with guidelines for establishing uniform regulations in keeping with the constitutional rights of off-campus speakers, were carefully drawn up by the court in that decision, responding to regulations set forth by a state agency in Mississippi. Other relevant decisions include: *Dickson* v. *Sitterson,* 280 F. Supp. 486 (1968), at the University of North Carolina; *Snyder* v. *Board of Trustees of University of Illinois,* 286 F. Supp. 927 (1968); *Brooks* v. *Auburn University,* 296 F. Supp. 188 (1969), in Alabama; *Smith* v. *University of Tennessee,* 300 F. Supp. 777 (1969); and *Molpus* v. *Fortune,* 311 F. Supp. 240 (1970), at the University of Mississippi.

Student Newspapers. In *Dickey* v. *Alabama State Board of Education,* 273 F. Supp. 613 (1967), the U. S. District Court found that a Troy State College rule prohibiting editorials in the college newspaper critical of the governor or legislature violated first amendment rights, so that suspension of the editor for such action was unjustified. In *Antonelli* v. *Hammond,* 308 F. Supp. 1329 (1970), the U. S. District Court ruled that submission of material to an advisory board at Fitchburg State College, Massachusetts, to determine whether it is suitable for publication in the campus newspaper (whether or not it is obscene) is an unjustified limitation of free expression under the first amendment and an unwarranted exercise of state power. Further, the fact that funds for the newspaper were received from compulsory student fees does not alter the rights of the students or the power of the president over the college press.

The U. S. Court of Appeals, in *Joyner* v. *Whiting*, 477 F. 2d 456 (1973), found the president's withdrawal of funds from the student newspaper at North Carolina Central University because of a segregationist editorial an illegal act of censorship, but held that prohibition of discrimination in staffing and advertising policies was justified, in that "campus organizations claiming First Amendment rights must comply with valid campus regulations." In *Bazaar* v. *Fortune*, 489 F. 2d 225 (1973), the U. S. Court of Appeals ruled that University of Mississippi officials, believing that an unofficial magazine published with the advice of the English department contains material they deem inappropriate, may not interfere with its publication and distribution, but that they could have the following disclaimer placed on the cover: "This is not an official publication of the University." As the dissenting judge pointed out, the issue of whether the university has the right not to sponsor the publication was not decided.

In *Arrington* v. *Taylor*, 380 F. Supp. 1348 (1974), the U. S. District Court ruled that although the student newspaper expressed and promoted views in opposition to those held by some students, subsidizing the newspaper at the University of North Carolina through a required student activity fee was not a violation of students' constitutional rights. However, in its decision the court did wonder why, in view of the paper being on a par with other news media in the area, the university continues to support it by providing rent-free space and substantial funds instead of having it go independent.

Another twist appears in *Schiff* v. *Williams*, 519 F. 2d 257 (1975), where the U. S. Court of Appeals found against dismissal of editors of the student newspaper at Florida Atlantic University, in that "the 'special circumstances' relied on by the university—poor grammar, spelling and language expression—could embarrass and perhaps bring some element of disrepute to the school," but, on the facts presented, the circumstances were "not the sort which could lead to significant disruption on the University campus or within its educational processes." The court further stated, "by firing the student editors in this case, the administration was exercising direct control over the student newspaper," thus violating their constitutional right of free speech.

As in the other first amendment cases, each of these federal court decisions adds material, if only by reaffirmation in some instances, to the developing sense of what the law allows, enables, prohibits, or supports. None is beyond change, many are influential, a few are decisive (65, 66, 157).

Interim Suspension and Preliminary Injunction

Interim suspensions have been permitted by the courts where there is reasonable cause to believe that the student's continued presence constitutes a danger to property, to others, or to himself, if specification of charges and notice of preliminary hearing is given, if a hearing is held within a few days, conditions permitting, and if, in any case, a hearing is held at the earliest practicable date after suspension. These qualifications have been established in *Marzette* v. *McPhee*, 294 F. Supp. 562 (1968), a Wisconsin State University—Oskosh case; *Stricklin* v. *Regents of University of Wisconsin*, 297 F. Supp. 416 (1969); and in *Gardenhire* v. *Chalmers*, 326 F. Supp. 1200 (1971), a case at the University of Kansas.

In *Braxton* v. *Municipal Court*, 109 Cal. Rptr. 897 (1973), the Supreme Court of California upheld legislation authorizing the chief administrative officer of a state higher education institution, or his designated agent, to order the temporary removal of a student or other person from campus without prior notice or hearing if there is "reasonable cause to believe that such person has willfully disrupted the orderly operation of such campus and that such behavior is likely to continue," or if the situation is one of emergency where there are overt acts of violence and other illegal conduct. The court further stated that in other circumstances the statutory language quoted above would be considered vague and overly broad, and that a hearing would have to be held "as soon as reasonably possible, not later than seven days following a request by the person excluded" (267). On petition of the administration at Southern University in Baton Rouge, the Court of Appeals of Louisiana, in *State Board of Education* v. *Anthony*, 289 So. 2d 279 (1973), upheld issuance by a lower court of a preliminary injunction enjoining students engaged in leading disruptive activity (boycotting classes and allegedly "destroying public property, harrassing other students, committing acts of obscenity, assaulting students and members of the Administration, and similar acts of disruption") from returning to the campus. Although both of these are state-level cases, not tested in the higher courts, they illustrate two ways of getting control over disruptive behavior that have been used: temporary suspensions, sometimes with legislative backup, and preliminary injunctions issued by a court (21, 41, 143, 155, 164, 187, 210). Knowing that these tools are ultimately available in extreme situations, administrators have often chosen less drastic measures of cooling down, containment, and persuasion (39, 41, 130, 173).

Fourth Amendment Rights: Search and Seizure

The fourth amendment of the U. S. Constitution states (302, p. 1041):

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Civil authorities must strictly conform to fourth amendment standards and may not search a student's room without a warrant. However, with one interesting exception, given below, courts have held that college officials may conduct a warrantless search of a dormitory room or locker and obtain evidence if there is "reasonable cause to believe" that a crime is being committed and incident to lawful arrest, or that institutional regulations are being violated, or to protect persons from danger or mistreatment (see especially 68, 111, 170, 244 for discussions of what is "reasonable" and 252, 269 for guidelines). Since the judicial criteria are still unclear, it would ordinarily be wise to obtain a warrant before taking any such action, apart from routine inspections to assure the health and safety of students and normal maintenance of property.

Several cases have established the general position just summarized: *Moore* v. *Student Affairs Committee of Troy State University,* 384 F. Supp. 725 (1968), in Alabama; *People* v. *Cohen,* 292 N.Y.S. 2d 706 (1968); and *Keene* v. *Rodgers,* 316 F. Supp. 217 (1970). The following decisions have provided additional elements in particular contexts. In *Speake* v. *Grantham,* 317 F. Supp. 1253 (1970), the U. S. District Court held that University of Southern Mississippi officials could seize evidence without a warrant if it is in "plain view." In *People* v. *Lanthier,* 97 Cal. Rptr. 297 (1971), the Supreme Court of California ruled that in an instance of "compelling urgency" at Stanford University (to identify the source of a noxious odor emanating from a student's library locker), campus officials may make a warrantless search and use what is found as evidence. But in *Piazzola* v. *Watkins,* 442 F. 2d 284 (1971), the U. S. District Court held that campus officials may not delegate their search and seizure rights to law enforcement officers; nor may a campus regulation on the subject "be construed or applied so as to give consent to a search for evidence for the primary purpose of a criminal prosecution. Otherwise, the regulation itself would constitute an unconstitutional attempt to require a student to waive his protection from unreasonable searches and

seizures as a condition to his occupancy of a college dormitory room." Nor may a police officer, claiming the "plain view" criterion, enter an open door and search a dormitory room without a warrant, according to a Supreme Court of Ohio judgment in *City of Athens* v. *Wolf*, 313 N.E. 2d 405 (1974). The Court of Appeals of Ohio ruled in *State* v. *Wingerd*, 318 N.E. 2d 866 (1974), that a student who "freely and intelligently" gives consent to search of his room thereby waives the relevant constitutional rights. The action of a campus security officer, who conducted a good-faith search of a lost purse for purposes of inventory but found illegal pills, was sustained by the Court of Appeals of Arizona in *State* v. *Johnson*, 530 P. 2d 910 (1975). With respect to a possible criminal proceeding, students have the same rights and exposures (e.g., responsibilities, requirements or constraints) regarding search and seizure as any other citizen, e.g. regarding use of a warrant and specificity of supporting affidavits.

In a 1975 decision (one of the longest, most thoroughly argued ever in the area of student rights), *Smyth* v. *Lubbers*, 398 F. Supp. 777 (1975), the status of students as citizens was so impressive to the U. S. District Court in Michigan that, in effect, it moved against the trend. In view of a regulation at Grand Valley State College prohibiting the use or possession of illegal drugs on campus, officials made a warrantless search for drugs in the rooms of students later suspended upon action by the campus judiciary. The court said that was wrong: "While the College has an important interest in enforcing drug laws and regulations, and a duty to do so, it does not have such special characteristics or such a compelling interest as to justify setting aside the usual rights of privacy enjoyed by adults." Moreover, "the College's resort to its own internal proceedings will not insulate either the College from the intrusion of civil authorities into its affairs or Smyth from the institution of formal criminal proceedings against him." The court further stated, contrasting its standard to the weaker, "reasonable cause" criterion used in many other cases: "The only possible justification for requiring less than probable cause for a search of an adult student's lodging, whether with or without a warrant, is that the student's interest in privacy is somehow less than that of other adults; or that the College's interest in enforcing laws and regulations is somehow greater than that of the community. But these contentions have already been rejected." Some alternative procedures for use of warrants are then presented, including legislation permitting college officials to obtain a search warrant from a civil magistrate or possibly from the campus judiciary.

Two other points raised by the court in the *Smyth* case are also worth noting because of their importance to a wide range of campus issues. First, the court found that the familiar ground of "substantial evidence is constitutionally inadequate as a standard of proof. It is so because:

> it provides no intelligible standard of proof. . . or. . . is totally one-sided and is lower than that constitutionally required. . . . The court is certain that the standard cannot be lower than "preponderance of the evidence.' However, given the nature of the charges and the serious consequences of conviction, the court believes the higher standard of 'clear and convincing evidence' may be required. The 'clear and convincing' standard is well below the criminal standard [i.e. that of "beyond a reasonable doubt"] (*Smyth* v. *Lubbers*, 398 F. Supp. 777 (1975).

Second, after affirming that schools have an especially high responsibility to protect constitutional freedoms, the court agreed that "it is good policy to handle these matters internally as far as possible":

> Institutions which enforce the law should not infringe upon fundamental constitutional rights in doing so. As Mr. Brandeis said, *"Our government is the potent, omnipresent teacher. . . .* If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy" (emphasis added). Olmstead v. United States, 277 U.S. 438, 485, 48 S.Ct. 564, 575, 72 L.Ed. 944 (1928). If all Government is an omnipresent teacher, so also most certainly and more immediately is a College in relation to its students. In part for this reason, *"(t)he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools"* (emphasis added). Shelton v. Tucker, 364 U.S. 479, 487, 81 S.Ct. 247, 251, 5 L.Ed.2d 231 (1966). (Smyth v. Lubbers, 398 F. Supp. 777 (1975).

Student Records

Dating from January 1975, in response to the Family Rights and Privacy Act of 1974 (the "Buckley Amendment"), federal guidelines on student records began to appear. The final set, produced in view of what had been learned from early experience, was published, among other places, in the June 28, 1976 issue of *The Chronicle of Higher Education* (294). These guidelines not only specify conditions under which students of 18 or the parents of minors may inspect and review what is in their files, but also state procedures for hearings, enforcement, disclosure of information, and for removal or amendment of offending documents and response to them. Recommendations may remain confidential if this is agreed to in writing by the student.

Regulatory Power

Vagueness and overgenerality or overbreadth in campus regula-

tions have brought rulings in favor of complainants; however, these criteria themselves so far lack precision (105, 133, 273). Despite the many cases in which colleges have been enjoined to uphold constitutional rights on the basis of such principles, college authorities still have enormous independent power over their students. Neither the famous *Dixon* case of 1961, which, in effect, put the *in loco parentis* doctrine to rest, nor its many successors (55, 57, 126, 161, 168, 214, 219) have deprived higher education institutions of their right and responsibility to conduct their own affairs or to achieve standards of justice and fairness in their own fashion. But they have created an atmosphere of concern that is subject to further definition in the courts whenever institutions fail to uphold constitutionally protected rights such as those discussed here.

The recent upsurge of state boards, systems, and legislative control further complicates any effort to locate where the regulatory authority actually resides. There is as yet no clear reason to suppose that legal and other student rights will be better protected at state than at local levels, although the opportunity is widely present. None of the literature has thus far surveyed the present and potential impacts of state-level policies and controls on student rights.

There is a growing tendency to resort to the courts or other governmental agencies to settle campus disputes (237). This will probably increase, at considerable (perhaps unsustainable) cost of time and money, unless internal procedures can be formed that enable people to feel confident of solving their problems on the institutional level. Such procedures can be achieved so that all but a few cases can be handled there. To do so may require some shifts in administrative style, as may be seen from earlier considerations in this essay and literature review and in the guidelines to follow.

Moral Aspects of Administrative Leadership

Several avenues to student-institutional relations and to the administration of student discipline are reviewed here by using a number of significant cases as signposts. Even where due process is not chiefly at issue, almost all these cases involve the sanction of suspension, since suffering lesser penalties rarely has led to court action, especially at the federal level. The question arises as to what approaches, styles, or criteria are appropriate over the broader scope of campus relationships. What administrative styles would be consistent with what the legal signposts indicate?

Lawrence Kohlberg's work on stages of moral awareness and behavior contributes toward an answer (313). Drawing upon earlier

work by John Dewey and Jean Piaget, as well as aspects of developmental psychology, Kohlberg distinguishes six stages of development within the moral domain. Administrative response to rights issues may be fruitfully checked against his scheme.

A first stage, at the preconventional level, entails unquestioning deference to power without reference to any underlying moral order, while the second stage involves viewing human relations after the marketplace model, such that right action consists chiefly in what instrumentally satisfies one's own needs. Before *Tinker, Dixon,* and other important cases from the 1960's and early 1970's, there were few legal constraints against an administrator operating on these bases in relating to students, or against a student acting similarly. Now there are several constraints, and these have had the efficacious effect of prompting the formation of more fair and reasonable disciplinary procedures and of more effective modes of student participation in decision-making. However, at the institutional level, anyone who assumes some administrative leadership role can still fruitfully inquire, To what extent are my actions, or the structures within which I work, either conducive to this level of awareness and action or expressive of it?

The same question can be asked of the other two levels Kohlberg distinguishes. At the conventional level, stage three chiefly orients actions to others' approval; stage four orients action to whatever authorities, fixed rules, and social convention ordain. Most administrative styles in some way have represented stage three or four, especially before the student protest days of the 1960's.

At the final level, which Kohlberg variously calls postconventional, autonomous, or principled, the fifth stage constitutes a legalistic social-contract orientation: respect for individual rights usually being contained within a broadly utilitarian framework, as in the U. S. Constitution. At the sixth stage, "right is defined by the decision of conscience in accord with self-chosen ethical principles appealing to logical comprehensiveness, universality, and consistency." Our interest here, and for the most part it is the interest of the courts, has been directed to ways of dealing with rights issues at the fifth and sixth stages, where reasoned and cooperative modes of managing conflict can be expected. The following guidelines are offered in that spirit.

Guidelines for Administrative Decisions Concerning Students

Undoubtedly, there will be more interaction between court and campus in the years ahead. Much can be gained from this process that will aid the development of campus governance and decision-making. Judicial restraint with respect to many areas of college life leaves academics free to put their own houses in order. In *Goldberg* v. *Regents of University of California*, 57 Cal. Rptr. 463 (1967), the court stated:

> Historically, the academic community has been unique in having its own standards, rewards, and punishments. Its members have been allowed to go about their business of teaching and learning largely free of outside interference. To compel such a community to recognize and enforce precisely the same standards and penalties that prevail in the broader social community would serve neither the special needs and interests of the educational institutions, nor the ultimate advantages that society derives therefrom. Thus, in an academic community, greater freedoms and greater restrictions may prevail than in society at large, and the subtle fixing of these limits should, in a large measure, be left to the educational institution itself.

Detailed guidelines for administrative decisions can be gleaned from the legally oriented literature and from official statements on the rights of students and others within the educational community. The following general recommendations draw both from the judicial experience and from independent efforts on campus. In large part, they directly refer to discussions in earlier sections. Although the index points to still further literature on all these subjects, bibliographical references are added for a few subjects not covered earlier; they are included in this final section to round out the picture.

The recommendations are presented more in the spirit of stimulating further injuiry than in persuading anyone to pursue some specific action, since every campus context offers its own particular problems. Although the focus is on student rights, implications may also be drawn for other types of campus relationships.

1. *Judicial Perspectives on Campus Relationships.* Consider alternative models of student-institutional relationships, with emphasis on cooperative and facilitative responses to student rights claims (pp. 12, 16).

The classical *in loco parentis* doctrine has been dying in the courts, to be replaced largely, though not exclusively, by a constitutional ap-

proach (p. 16). It is worth considering to what degree undesirable remnants remain on campus and to what degree effective guidance and counseling has been mistakenly thrown out with the desirable relaxation of the older, parental functions. The contractual and fiduciary relationships find their place within case law. Examining these possibilities in the light of basic educational goals and functions could enable administrators to develop new programs and to form safeguards against turning academic process into an uncontrolled and impersonal commercial venture. In colloquial terms, two excesses also appear that seem out of place within a genuinely academic setting: "who pays the piper calls the tune" and "you pay your money and take your choice."

The constitutional approach is preeminent in the courts. The student is regarded as a citizen, with full rights on and off campus. The communal or joint-participatory approach has so far been suggested only through more ideal and indirect language in court opinions, and is the one that depends most on the institutions themselves. This would seem to be the only context within which problems that arise with the other approaches can be well treated, allowing the virtues of each approach to complement the other. It gives Kohlberg's sixth stage a chance, whereby people work out conflicts of value and other beliefs together, in a reasoned fashion, with a conscientious effort to treat all people by the same principles, drawing from what is in the spirit as well as the letter of the law (p. 13). It is essential to pursue development of campus relationships in this way if the valid concerns of student activists are to be honored (pp. 14-15), if the developmental needs of students are to be respected (pp. 14-15), and if the democratic ideal of the open society, already deeply embedded in traditions of academic freedom (p. 10), is to be sustained.

2. *Governance Patterns.* Consider which governance patterns are appropriate for student involvement and in what respects. The basic principles should derive from an understanding of the interrelationship of law, morality, and administration referred to in the first recommendation, from an understanding of the nature and patterns of rights that is appropriate to a college or university setting (pp. 18-23), and from an understanding of the degree to which students and others have a right to share in decision-making (p. 24).

Some such distinction as that made by Richard C. Richardson between involvements in day-to-day management, policy formulations, and review of administrative action is particularly apt for this purpose (53, 123). Student affairs areas (student publications and activity funds) would require primary leadership from students, as might the

proposing of new policy or the initial review of old policy in areas of special interest to students. Faculty and administrative staff would be chiefly responsible for other domains (faculty promotions, faculty salaries, instructional funds, although pertinent information and feedback might be provided by students. In still other areas students could be directly involved with others in policy formulation and in review of administrative action, sometimes on an equal basis and sometimes not.

Decisions about how to include students should be made in such a way as to fulfill two criteria: respect for developing student rights as a matter of principle, and provision for those concerned to learn from the proposed process so as to improve it and to yield long-term benefits to the institution. Consideration should be given also to areas of decision-making where students and their representatives could truly help, thus providing a chance for them to experience more immediate satisfaction as well as learning. These areas could be ranked on a generally ascending scale of priority, based on the following, more specific criteria: importance on the basis of student rights and needs; capacity to generate helpful student participation; opportunity to build decision-making competencies within the student body and its leadership; and closeness to the institution's educational mission. The opportunities that result should be made explicit. Effort should be put into their advancement—effort just as committed as that expended on fiscal, program, and planning needs.

3. *Student Affairs Procedures.* Gain awareness of procedural distinctions that have developed as a result of judicial experience that might be applied, with some modification, to administrative practice (pp. 24-29).

A sensitive approach to student affairs would benefit from an understanding of when to apply formal or informal procedures, i.e., those under specific rules and those more open to interpersonal exploration of issues. Most of the cases cited could probably have been handled more effectively through informal institutional procedures or through better organized formal channels, which also would have facilitated students participating in less direct or formal ways (120).

It is useful to keep in mind what kinds of offenses are matters for campus tribunals or for the civil or criminal courts—and what further responsibility can be undertaken for bail (195), student attorneys (41), and other services. Well informed advice of counsel is essential for this purpose. Such awareness might help achieve a

less elaborate set of disciplinary procedures, with educational and communal aims inherent to it, especially to avoid establishing a severe, acrimonious, criminal-type proceeding (pp. 6-9, 16-23, 25, 28). Some grasp of the uses that can be made at questionary proceedings, as employed in regulatory commissions, as opposed to the adversary proceedings used in the criminal courts, would also save much heartache (182). Also, efforts should be made to avoid either double jeopardy (p. 27) or an unfair compilation of actions, which requires an understanding of when judiciary action, both on and off campus, would and would not be appropriate (259).

4. *Student Discipline.* When published standards and policies affecting student discipline must be relied on, make them explicit and available—again, under the condition of representative involvement in their formulation, review, and change wherever appropriate and feasible.

The courts have already provided some criteria that would aid in avoiding discrimination, vagueness, and overgenerality in such statements (pp. 27, 38). It would be wise to consider when rules and regulations tend to be of disservice, notably when they are thought to supplant rather than to enhance and support morally-informed relationships (pp. 12-13). By all means possible, try to avoid taking any action that will decrease facility of communication or clarity of "standing" among campus groups. (e.g., discontinuing student publications or deciding to cease giving official recognition to any student organizations to obviate having troubles in these areas). These are essential ingredients of a healthy academic community.

5. *Policy Formulation.* In keeping with the first four recommendations, bring the fiduciary, contractual, and constitutional aspects of policy affecting students into line with the basic, moral considerations that reflect both the rights of students and their educational and developmental needs. This is a process that requires the use of expert consultants and participation from a broad range of membership within the institutional community. It would be useful to prepare for formal decision-making on such policy issues within exploratory groups or task forces and to coordinate these efforts with long-range planning. Where possible, it would also be helpful not to segregate student concerns in the setting of comprehensive, long-term goals.

6. *Decision-Making Skills.* Make preparatory group process and problem-solving workshops or inservice training available to all campus committee members and administrative staff. This will greatly strengthen the decision-making process and encourage the participa-

tion of students. It also will enable students to make use of the less coercive, more democratic modes of change on campus (pp. 15-16) and will strengthen their capacity to do the same in the larger society.

7. *Campus Judiciary System.* Develop a campus judiciary system, formal and informal, that provides fair treatment and procedural rights. In disciplinary cases, the courts have emphasized such features as specificity of rules, notice of charges, provision of a hearing, and evidentiary rules, all richly detailed in the literature (pp. 24-29, 35). The ombudsman process is an excellent one for combining formal protection with informal values and for averting the need for more costly proceedings (98, 145). If informal processes are running well, the more formal steps within the judiciary system rarely will need to be used.

8. *Substantive Rights Areas.* Set up a list of policy areas to be developed that affect the more substantive rights—rights of free speech and expression, free press, demonstration and dissent, hearing outside speakers (pp. 30-34); political and extracurricular activties; personal privacy and freedom, such as relate to living arrangements, personal appearance, and access to records (pp. 36-38); student employment rights (215); and the right to be treated fairly, a substantive due process right (163, 245). If such policymaking is approached with the aim of enabling action rather than simply restricting it, it will be within the spirit and not the dead letter of constitutional law.

9. *Involvement with the Courts.* Prepare for greater involvement with the courts (pp. 5-9, 16-17, 23, 39). This involvement is hard to predict, and perhaps could even be avoided in large part, but there are signs that it will be on the increase (237). Counsel should be trained both to draw upon college law and to appreciate the special circumstances of academic life.

10. *Lobbying.* Lobby against legislative invasions of campus affairs. This occurred during the height of the student protests in the form of aid restrictions (41, 141, 176, 183). This lobbying should be done so that the regulatory power and the modes of handling rights issues can be kept on campus and contained within the special functions of educational institutions (pp. 38-39).

11. *Routes to Effective Student Participation.* Consider the number of roads that are being traveled toward greater student involvement in campus decision-making and their possible relations to each other (pp. 5-6). For example: collective bargaining, use of student at-

torneys, student lobbying, reorganization of student government, work-study grants for leadership training, credit through independent study courses for experience in campus governance, public interest research groups, student-run cooperatives and services (this may well *increase very rapidly, 241*), improved student evaluation of teachers, and student representation on boards of trustees. The tripartite committee is not the only effective mode of representation, and in some areas it is probably the least effective (14, 32, 53, 87).

12. *Conflict-Utilization Skills.* Perhaps most important is to improve skills for managing and utilizing conflict (79, 204). If anything from legal experience is applicable to campus situations, it is the necessity and ability to deal with conflict. However, the courts alone will not adequately instruct institutions about what may or must be done. In this regard, as in many others, the campus has its own contribution to make.

Conclusion

In effect, not even these twelve sets of guidelines can provide the conclusions to this essay and literature review. The subject has been the relation of law to campus decision-making as seen through the prism of student rights. The real conclusions must emerge at the colleges and universities, among those on each campus willing to carry the inquiry forward in a manner suitable to their context. What has been offered is a background and perspective that should help that pragmatic, experimental process along.

Bibliography

Student rights and responsibilities are closely intertwined with those of administrators, faculty, and other college staff. Yet discussions that consider the student situation from a legal standpoint are almost completely separate from those that treat the other aspects.

Only the student aspect is surveyed, in a nearly exhaustive listing of the important items, including a selection of dissertations and unpublished documents that have been cataloged. The writer has already provided bibliographies on faculty bargaining and governance in recent publications (82, 85, 90). The situations of nonacademic staff require separate treatment, as does the relation of all these factors to the sociopolitical environment of higher education today. Works that consider only children's rights or the public school setting are also excluded, though several items refer to them. A selection of works that deal with student protest and student participation in governance is added, since these activities have been the primary vehicles for concern about student rights from the late 1960's to the present.

The index in effect provides several minibibliographies, referring to the items by number. An asterisk (*) appears by 80 items judged to be especially valuable for use by nonspecialists or for general reference purposes.

General Resources

Several agencies regularly supply college law information, usually through periodicals. Additional periodicals provide occasional information on aspects of the subject.

1. The National Association of College and University Attorneys (NACUA) issues two publications. *College Law Digest* (1970-) is a bimonthly digest of cases. *Journal of College and University Law* (1973-), formerly *College Counsel*, is a quarterly presenting technical summaries and discussions of major issues facing attorneys in higher education. Address: One Dupont Circle, N.W., Suite 510, Washington, D.C. 20036.

2. The National Organization on Legal Problems of Education (NOLPE) issues four publications. The semiannual *NOLPE School*

Law Journal includes articles, case notes, and special sections. Like the quarterly *Journal of Law and Education* (728 National Press Building, Washington, D.C. 20004), it emphasizes public school matters, where most of the case law resides, but has some coverage of higher education concerns. The monthly *NOLPE Notes* includes briefs on important school laws cases that are not reported in the standard sources. The bimonthly *NOLPE School Law Reporter* presents all school law cases reported by state and federal courts of record, with a separate section for higher education. NOLPE also issues *Yearbook of School Law*. Address: 825 Western Avenue, Topeka, Kansas 66606.

3. D. Parker Young has edited proceedings of the annual conference on higher education and the law, sponsored since 1970 by the Institute of Higher Education, University of Georgia. Address: Athens, Georgia 30602. A basic casebook by D. Parker Young and Donald D. Gehring, *The College Student and the Courts,* has continued through supplements (64).

4. The United States National Student Association regularly publishes booklets dealing with student rights issues (see Index). Address: 2115 S Street, N.W., Washington, D.C. 20008.

5. The National Student Lobby began the monthly newsletter *Student Lobbyist* in January 1975, reporting on state and federal legislative activities affecting college students. Address: 2000 P Street, N.W., Washington, D.C. 20036.

6. *Legislative Review* and other services from the Education Commission of the States emphasize legislative activities. Address: 1860 Lincoln Tower Building, Denver, Colorado 80203.

7. Current issues are highlighted in the College Press Service's bimonthly *Center for the Rights of Campus Journalists Bulletin*. Address: 1764 Gilpin Street, Denver, Colorado 80218.

8. The Reporter's Committee for Freedom of the Press distributes information on rights of student journalists. Address: Room 1310, 1750 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

9. The law reviews remain the chief resource for case reports and new interpretations, along with the standard legal reporters, digests, and indexes. The following periodicals are also useful: *Arbitration in the Schools, Association of Governing Boards Reports, College and University Business, College Student Journal, Community and*

Junior College Journal, Community College Review, Journal of the College and University Personnel Association, Journal of College Student Personnel, Journal of Law and Education, Journal of Higher Education, Journal of the NAWDAC, NASPA Journal, NASSP Bulletin, and School Law Journal.

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vate, Four-Year, Non-Sectarian, Accredited Institutions of Higher Education." Ph.D. dissertation, George Peabody College for Teachers, 1975. 205 p. Dissertation Abstracts Vol. 36/04-A, p. 2063; Order No. 75-22290. Content analysis of documents from 55 sample institutions. Further one-way analyses of variance found significant differences with respect to comprehensiveness of institutional policy statements, regional differences, enrollment variables, and funding variables. Policy statements were found to be inadequate to meet current judicial standards.

84. Sivulich, Stephen. "The Influence of Legal Decisions on Student Disciplinary Procedures in Higher Education." Ed.D. dissertation. Lehigh University, 1975. 194 p. Dissertation Abstracts Vol. 36/05-A, p. 2675; Order No. 75-24021. Reviews state and federal court decisions and other relevant literature on due process, concurrent jurisdiction, and legal counsel in the hearing.

85. Tice, Terrance N. *Campus Employment Relations: Readings and Resources.* Ann Arbor: Institute of Continuing Legal Education, 1975. xi, 627 p. Available at ICLE, Hutchins Hall, Ann Arbor, Mich. 48109. This, plus a companion volume (90), continues an ICLE series by the same editor: *Faculty Power: Collective Bargaining on Campus* (1972) and *Faculty Bargaining in the Seventies* (1973). Tice also prepared the 193-item indexed *Resources on Academic Bargaining and Governance.* Washington, D.C.: ERIC Clearinghouse on Higher Education, July 1974. 49 p. ED 093 198. MF-$0.96; HC- $2.70.

*86. Vladeck, Judith P., and Stephen C. Vladeck, eds. *Collective Bargaining in Higher Education—The Developing Law.* New York: Practicing Law Institute, 1975. xxiv, 443 p. Available at PLI, 810 Seventh Avenue, New York, N.Y. 10019.

*87. Wren, Scott C. *The College Student and Higher Education Policy: What Stake and What Purpose?* Washington, D.C.: Carnegie Foundation for the Advancement of Teaching, 1975. xv, 54 p. By the Vice President for University Relations, University of California, Berkeley; an examination of Carnegie recommendations relating to students.

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*88. O'Neil, Robert M. *Discriminating Against Discrimination: Preferential Admissions and the DeFunis Case.* Bloomington: Indiana University Press, 1976. 288 p.

*89. Shark, Alan R., Kathleen Brouder, et al. [*Students and Academic Collective Bargaining.*] Washington, D.C.: Research Project on Students and Collective Bargaining, forthcoming. This final report of the 1974-1976 research project is to include legal and historical background, substantial case studies, surveys, information about legislative activity, and critical essays.

*90. Tice, Terrence N., et al. Part V: "Student Involvements." In *Campus Employment Relations*, edited by Terrence N. Tice. Ann Arbor: Institute of Continuing Legal Education, forthcoming. Terrence N. Tice, "Student Participation in Academic Decision Making"; Alan R. Shark, "Students at the Faculty Bargaining Table"; Kathleen Brouder and Lucy Miller, "Legislative Initiatives on Students and Academic Bargaining"; John D. Forsyth, "Collective Bargaining with Graduate Student 'Employees': The University of Michigan Experience."

91. Young, D. Parker. *Higher Education: The Law and Constructive Change.* Athens, Georgia: Institute of Higher Education, University of Georgia, 1976. 69 p.

Student Rights: Articles

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*92. American Association of University Professors, U.S. National Student Association, Association of American Colleges, National Association of Student Personnel Administrators, and National Association of Women Deans and Counselors. "Joint Statement on Rights and Freedoms of Students." *AAUP Bulletins* 53 (1967): 365. The statement was subsequently endorsed by a number of other professional bodies. Also included in item 21 here (213-224).

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93. Bowles, W. Donald. "Student Participation in Academic Governance." *Educational Record* 49 (Summer 1968): 257-262. Recommendations to students.

*94. *Denver Law Journal* 45, no. 4 (Special 1968): 497-678. Symposium: "Legal Aspects of Student-Institutional Relationships." "Introduction," 497-501; Logan Wilson, "Campus Freedom and Order," 502-510; William M. Beaney, "Students, Higher Education, and the Law," 511-524, and comments by Edward Schwartz, Christopher H. Munch and Stephen D. McClennan, 525-544; Terry F. Lunsford,

"Who Are Members of the University Community?" 545-557; Robert B. McKay, "The Student as Private Citizen," 558-570, and comments by Stephen Wright, Robert Lutz and Paul H. Cashman, 571-581; William W. Van Alstyne, "The Student as University Resident," 582-613, and comments by C. Peter Magrath, Rachel Scott and Roy Lucas, 614-642; William Cohen, "The Private-Public Legal Aspects of Institutions of Higher Education," 643-648; Philip Monypenny, "The Student as a Student," 649-662, and comments by Neal R. Stamp, Robert S. Powell, Jr., and Earle W. Clifford, 663-678.

95. Heffner, Ray L. "The Student Voice in Institutional Policy." *Association of Governing Boards Reports* 10 (February 1968): 3-10. Developmental procedures recommended by the president of Brown University.

96. Henderson, Algo D. "The Administrator/Student Conflict." *Administrative Law Review* 21 (November 1968): 65-77. Presents group participative model versus participatory democracy or traditional bureaucracy, in view of the current shift from in loco parentis to identification of student rights with civil liberties and in view of the validity of many student concerns.

97. Hodkinson, Harold L. "Students and an Intellectual Community." *Educational Record* 46 (Fall 1968): 398-406. Students who can should participate, along with the best faculty and administrators, in such areas as curriculum development and academic appointments.

•98. Kutner, Luis. "Habeas Scholastica: An Ombudsman for Academic Due Process—A Proposal." *University of Miami Law Review* 23 (Fall 1968): 107-159.

99. *Loyola Law Review* 15 (1968-1969): 219-296. Symposium on Natural Law and Student Unrest.

100. McDonough, John R. "The Role of Students in Governing the University." *Association of Governing Boards Reports* 10 (April 1968): 24-31. Argues against student participation in decision-making on grounds that they are patrons or consumers not democratic partners.

101. Note—"Academic Freedom." *Harvard Law Review* 81 (March 1968): 1045-1159. Systematic study on academic freedom of teachers (1065-1128) and students (1128-1159).

102. Note—"Reasonable Rules, Reasonably Enforced—Guidelines for University Disciplinary Proceedings." *Minnesota Law Review* 53 (December 1968): 301-341.

103. Perkins, James A. "The University and Due Process." *American Library Association Bulletin* 62 (September 1968): 977-983. A general examination of court involvement in academic matters. Response to Cornell President Perkins by Professor Clark Byse of the Harvard Law School, "The University and Due Process: A Somewhat Different View," *AAUP Bulletin* 54 (June 1968): 143-148.

104. Thierstein, William R. Comment—"The College Student and Due Process in Disciplinary Proceedings." *South Dakota Law Review* 13 (Winter 1968): 87-112.

105. Twohig, R. Raymond, Jr. Note—"Uncertainty in Campus Disciplinary Regulations." *Ohio State Law Journal* 29 (Fall 1968): 1023-1037. Argues for application of due process principles concerning vagueness and overbreadth to college regulations.

•106. Van Alstyne, William W. "The Judicial Trend Toward Student Academic Freedom." *University of Florida Law Review* 20 (Winter 1968): 297-304. Another among the author's thoroughgoing and reflective contributions to college law.

107. Wilson, Logan. "Protest Politics and Campus Reform." *Administrative Law Review* 21 (November 1968): 45-64. ED 028 696. MF-$0.96; HC-$1.88. A general and thoughtful discussion by the then president of the American Council on Education.

108. Witmer, David R. "Double Jeopardy and University Students in Wisconsin." Madison: Wisconsin Board of Regents of State Colleges, 1968. 18 p. ED 059 680. MF-$0.96; HC-$1.88.

109. Yegge, Robert B. "Emerging Legal Rights for Students." In *Stress and Campus Response*, edited by G. Kerry Smith. San Francisco: Jossey-Bass, 1968. P. 77-90. A survey of issues.

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110. Alexander, William M. "Rethinking Student Government for Larger Universities." *Journal of Higher Education* 40 (January 1969): 39-46. Innovative election and voting procedures suggested for a viable student parliament.

•111. Armstrong, Timothy J. "College Searches and Seizures: Pri-

vacy and Due Process Problems on Campus." *Criminal Law Bulletin* 5 (1969): 537-571. Summary of constitutional and procedural problems. Originally appeared as a note under this title in *Georgia Law Review* 3 (Winter 1969): 427-458.

112. Beals, John T. Note—"Constitutionality of the Missouri Scholarship Bill." *St. Louis University Law Journal* 13 (Summer 1969): 624-636. A thorough analysis of one among the many legislative responses to campus unrest from 1968 to 1970.

113. Bible, Paul A. "The College Dormitory Student and the Fourth Amendment—A Sham or a Safeguard?" *University of San Francisco Law Review* 4 (October 1969): 49-64.

114. Crary, John C., Jr. "Control of Campus Disorders: A New York Solution." *Albany Law Review* 34 (Fall 1969): 85-94. Article 129A, N.Y. Laws of 1969, ch. 191, requires all private and public higher education institutions in the state to adopt rules and regulations to maintain order.

115. Frick, G. W. Comment—"Public Universities and Due Process of Laws: Students' Protection Against Unreasonable Search and Seizure." *Kansas Law Review* 17 (April 1969): 512-529. Survey of fourth amendment protections for university dormitory residents and of the few related decisions regarding search and seizure.

116. Greene, JeRoyd W., Jr. "University Discipline and Student Rights: A Suggested Hearing Model." *Howard Law Journal* 15 (Summer 1969): 481-517.

117. Hallberg, Edmond C. "An Academic Congress: A Direction in University Governance." *Phi Delta Kappan* 50 (May 1969): 538-540.

118. Hermann, Dale M. Note—"Judicial Intervention in Expulsions or Suspensions by Private Universities." *Willamette Law Journal* 5 (Winter 1969): 277-294. Contrasts the contractual, constitutional, tort, and fiduciary approaches.

119. Horwitz, Richard J., and David J. Miller. Comment—"Student Due Process in the Private University: The State Action Doctrine." *Syracuse Law Review* 20 (Summer 1969): 911-923. Regarding 14th amendment prohibitions against state action in private institutions.

•120. Johnstone, Bruce C. "The Student and His Power." *Journal of Higher Education* 40 (March 1969): 205-218. Examination of diffi-

culties institutional structures place in the way of effective formal student participation in decision-making; alternative models for indirect, informal participation through lower-level communications, individualized programs, consumer preference, the faculty reward system, the experimental colleges, and expression of dissent.

121. McCoy, Joseph L., and Roger T. Clark. Comment—"Do College Students Have a Constitutionally Protected Right to Hear Outside Speakers?" *Mississippi Law Journal* 41 (Winter 1969): 135-141.

122. Pollack, Steven I. Note—"The Scope of University Discipline." *Brooklyn Law Review* 35 (Spring 1969): 486-497. Brief discussion of authority to regulate student conduct outside the classroom and of the purposes, limitations, enforcement, and hearing procedures regarding such regulation.

*123. Richardson, Richard C., Jr. "Recommendations on Student Rights and Freedoms." *Junior College Journal* 39 (February 1969): 34-36,38,40,42,44. A thoughtful statement listing areas of student involvement, rights and responsibilities appropriate to management of the institution, policy formulation, and review of administrative action.

124. Smart, James M., Jr. Comment—"The Fourteenth Amendment and University Disciplinary Procedures." *Missouri Law Review* 34 (Spring 1969): 236-259. Jurisdiction, due process, and related issues.

125. Tabb, Judy N. Note—"Constitutional Law—Student Academic Freedom—'State Action' and Private Universities." *Tulane Law Review* 44 (December 1969): 184-191. Reflection on "state action" implications of *Powe* v. *Miles* (1968).

*126. Van Alstyne, William W. "The Tentative Emergence of Student Power in the United States." *American Journal of Comparative Law* 17 (1969): 403-417. Historical background: from in loco parentis status to contractual relation to constitutional protection. Part of an international symposium on "Student Power in University Affairs," 331-417.

127. Van Alstyne, William W. "A Suggested Seminar in Student Rights." *Journal of Legal Education* 21 (1969): 547-559. Introduction plus course outline, with citations of relevant cases.

*128. Wright, Charles Alan. "The Constitution on Campus." *Vanderbilt Law Review* 22 (May 1969): 1027-1088. A well-formed description and brief evaluation of constitutional provisions regarding student rights and due process by the then Visiting Professor at Yale Law School.

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129. Andes, John. " 'Due Process' for Junior College Students in Academic and Discipline Cases." Gainesville: Florida Community Junior College Inter-institutional Research Council, Institute of Higher Education, Florida University, March 1970. 13 p. ED 038 126. MF-$0.96; HC-$1.88.

*130. Baldwin, Fletcher N., Jr. "Methods of Social Control of Academic Activists within the University Setting." *St. Louis University Law Journal* 14 (Spring 1970): 429-462. A basic essay by a University of Florida law professor, drawing from social science and philosophy of law as well as from the literature on student protest.

131. Barilla, John. Note—"Constitutional Law—Inherent Disiciplinary Powers of a University Include Proscription of Student Distribution of Pamphlets Where There is a Reasonable Forecast of Substantial Campus Disruption." *Syracuse Law Review* 21 (Summer 1970): 1260-1270. On *Norton* v. *Discipline Committee of East Tennessee State University* (1969) and related decisions.

132. Beverage, Roger M. Note—"Colleges and Universities—Section 1983, Procedural Due Process and University Regulations: Any Relationship?" *Nebraska Law Review* 49 (March 1970): 689-702. On *Esteban* v. *Central Missouri State College* (1969).

*133. Cox, Joseph J. Comment—"Higher Education and the Student Unrest Provisions." *Ohio State Law Journal* 31 (Winter 1970): 111-124. Consideration of the void-for-vagueness doctrine regarding due process. Compare Anthony G. Amsterdam, Note—"The Void-for-Vagueness Doctrine in the Supreme Court," *University of Pennsylvania Law Review* 109 (November 1960): 67-116.

*134. Deegan, William L., Karl O. Drexel, John T. Collins, and Dorothy L. Kearney. "Student Participation in Governance." *Junior College Journal* 41 (November 1970): 15-22. Examination of several models: traditional, separate jurisdictional, both rejected; and alternative participation models (Schoben's bicameral, Richardson's areas of responsibility, and the all-college senate models).

135. Doggett, Lloyd. Note—"Legal Ethics—Constitutional Law—Despite Restriction by the Board of Regents and Possible Ethical Objections, the Students' Attorney Act of the University of Texas at Austin Represents an Initial Effort Toward the Provision of Group Legal Services for Students." *Texas Law Review* (June 1970): 1215-1222.

136. Eudy, J. Clinton. Note—"Colleges and Universities—Constitutional Law—Legality of Broad Rules Governing Student Behavior." *North Carolina Review* 48 (June 1970): 943-955. Special consideration of *Esteban* v. *Central Missouri State University* (1969). Also see Note on this case in *Minnesota Law Review* 55 (November 1970): 116-128, and the 1970 Beverage note listed above (132).

137. Fisk, Winston M. "A System of Law for the Campus: Some Reflections." *George Washington Law Review* 38 (July 1970): 1006-1025.

138. Frey, Martin A. "The Right of Counsel in Student Disciplinary Hearings." *Valparaiso University Law Review* 5 (Fall 1970): 48-70.

139. Furay, Sally M. Note—"Legal Relationship Between the Student and the Private College or University." *San Diego Law Review* 7 (May 1970): 244-267. Historical background and recent development of the constitutional protection of student rights.

•140. Goldstein, Stephen R. "Reflections on Developing Trends in the Law of Student Rights." *University of Pennsylvania Law Review* 118 (February 1970): 612-620. Although the brief discussion relates more specifically to public school administration, the tracing of three trend periods is informative for postsecondary settings as well —from judicial skepticism of any governmental interference with the rights of citizens (late nineteenth century to 1930's) to judicial deference to administrative decision-making to the recent return to skepticism.

141. Haddock, Robert M. Note—"Federal Aid to Education: Campus Unrest Riders." *Stanford Law Review* 22 (May 1970): 1094-1107. A study of riders attached to federal bills terminating or prohibiting federal aid to individuals involved in campus disturbances.

142. Haskell, Paul G. "Judicial Review of School Discipline." *Case Western Reserve Law Review* 21 (February 1970): 211-246. Examination of some cases regarding student conduct rules, disciplinary pro-

ceedings, and student expression in both secondary and postsecondary schools.

143. Herman, Joseph. "Injunctive Control of Disruptive Student Demonstrations." *Virginia Law Review* 56 (March 1970): 215-238.

144. Kovacevich, George J. Comment—"Student Unrest in a Legal Perspective: Focus on San Francisco State College." *University of San Francisco Law Review* 4 (April 1970): 255-283.

145. London, Herbert. "Underground Notes from a Campus Ombudsman." *Journal of Higher Education* 41 (May 1970): 350-364. Personal testimony from an ombudsman for student grievances at New York University.

146. Maxwell, Richard. Comment—"Rules of Evidence in Disciplinary Hearings in State-Supported Universities." *Texas Tech Law Review* 1 (Spring 1970): 357-365.

147. Meiklejohn, Douglas. Note—"Admissibility of Testimony Coerced by a University." *Cornell Law Review* 55 (February 1970): 435-448. The problem arises when a student is ordered to testify under threat of expulsion in college hearings before related criminal trials have been completed. May his testimony be admissible as evidence at the trail? Fourteenth amendment and "state action" considerations.

148. Note—"Campus Confrontation: Resolution by Legislation." *Columbia Journal of Law and Social Problems* 6 (January 1970): 30-48. Legislative reactions, the vagueness issue.

149. Note—"State Statute Requiring Colleges to File Disciplinary Rules May Justify a Finding of State Action in Disciplinary Proceedings of Colleges." *Columbia Law Review* 70 (December 1970): 1452-1459. New York State legislation, 1969, and subsequent court action. See the 1969 Crary article (114).

150. Note—"Constitutional Law—State Action—Regulation of College Disciplinary Code." *Fordham Law Review* 39 (October 1970): 127-136. Comparison of recent cases relating to traditional exclusion of federal jurisdiction in cases where a plaintiff is not deprived of due process by action of a state rather than a purely private person.

151. O'Connor, David F.P. "Student-Employees and Collective Bargaining under the National Labor Relations Act: An Alternative to Violence on American Campuses." *George Washington Law Review*

38 5 (July 1970): 1026-1050. Suggests that students might be entitled to bargain under section 7 of the National Labor Relations Act.

•152. O'Neil, Robert M. "Private Universities and Public Law." *Buffalo Law Review* 19 (Winter 1970): 155-193. General survey by a Berkeley Professor of Law.

•153. Project—"Procedural Due Process and Campus Disorder: A Comparison of Law and Practice." *Duke Law Journal* 1970 (August 1970): 763-794; "An Overview: The Private University and Due Process," *id.;* 795-807; "Appendix A: Selected Bibliography on Due Process and the University—1968-70," *id.;* 808-809; "Appendix B: Sample Questionnaire and Summary of Results," *id.;* 811-818.

•154. Richardson, Richard C., Jr. "Needed: New Directions in Administration." *Junior College Journal* 40 (March 1970): 16-22. Experimental modes of administrative coordination and problem-solving, with detailed organization charts showing the use of a modified functional administration model versus line and staff types. See response in vol. 41, no. 5 (February 1971) by Charles A. Atwell and J. Foster Watkins, "New Directions for Administration—But for Different Reasons," pp. 17-19. Their rationale for broader participation in governance is drawn from organizational behavior studies.

•155. Rosenthal, Robert R. "Injunctive Relief Against Campus Disorders." *University of Pennsylvania Law Review* 118 (April 1970): 746-765. Procedures for obtaining injunctive relief are described and evaluated, and the underlying equitable and constitutional principles considered.

156. Salem, Richard G., and William J. Bowers. "Severity of Formal Sanctions as a Deterrent to Deviant Behavior," *Law and Society Review* 5 (August 1970): 21-40; "Severity of Formal Sanctions as a Repressive Response to Deviant Behavior," *id.* 6, no. 3 (February 1972): 427-441. Little evidence of direct deterrent effect of applying severe formal sanctions was found for academic situations or others studied by social scientists, though some indirect effect on campus climate was apparent.

•157. Schwartz, Herbert T. "The Student, the University and the First Amendment." *Ohio State Law Journal* 31 (Fall 1970): 635-686. A detailed consideration of speech rights: background, scope of protection, student activities having first amendment implications.

158. Wendelsdorf, Scott T. Comment—"Constitutional Law—The Power of a Governor to Proclaim Martial Law and Use State Military Forces to Suppress Campus Demonstrations." *Kentucky Law Journal* 59 (1970-71): 547-572. A discussion of instances and cases.

159. Weston, Charles H. Note—"Constitutional Law—First Amendment—When a Speaker May Be Excluded at a State University." *Mercer Law Review* 21 (Summer 1970): 689-694.

160. Wilkinson, Ernest L., and R. Richards Rolapp. "The Private College and Student Discipline." *American Bar Association Journal* 56 (February 1970): 121-126. Brief discussion of the contractual rather than constitutional principles said to govern the situation of the private college.

161. Wilson, Douglas. Note—"The Emerging Law of Students' Rights." *Arkansas Law Review* 23 (Winter 1970): 619-633. Change from in loco parentis doctrine, from *Dixon* v. *Alabama State Board of Education* (1961) to *Tinker* v. *Des Moines Independent Community School District* (1969).

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162. Bailey, Theodore M. Note—"The Constitutional Standards for the Content of College Disciplinary Regulations." *University of Illinois Law Forum* (1971) 256-277. Survey of relevant cases and recommendation of due process and equal protection standards under the 14th amendment.

*163. Beaney, William M., and Jonathan C.S. Cox. "Fairness in University Disciplinary Proceedings." *Case Western Reserve Law Review* 22 (April 1971): 390-407. A well-presented essay on issues necessary to consider in order to shape a fair proceeding and to achieve a warmly cooperative setting.

164. Benson, Roger L. Note—"Administrative Law: Summary Suspension of Students under the Oklahoma Administrative Procedures Act." *Oklahoma Law Review* 24 (August 1971): 365-372.

165. Blackwell, Thomas E. "Evolution and Development of College Law." *Cleveland State Law Review* 20 (January 1971): 95-110; "College Law: 1970-1971: Second of a Series of Surveys," *id.*, no. 3 (September 1971): 454-464. A continuation of coverage begun in his 1961 book (17) and carried forward in his 1974 book (65).

166. Brakebill, Marwin B. Comment—"Suspension of Student Pending Disciplinary Hearing." *Texas Tech Law Review* 2 (Spring 1971): 271-279.

167. Branch, James A., Jr. Note—"Student Discipline Cases at State Universities in New Mexico—Procedural Due Process." *New Mexico Law Review* 1 (January 1971): 231-262.

168. Brittain, Kerry R. Comment—"Colleges and Universities: The Demise of in loco parentis." *Land and Water Law Review* 6 (1971): 715-741.

*169. Carrington, Paul D. "Civilizing University Discipline." *Michigan Law Review* 69 (January 1971): 393-418. A basic essay on many of the key issues.

170. Caruso, Lawrence R. "Privacy of Students and Confidentiality of Student Records." *Case Western Reserve Law Review* 22 (April 1971): 379-389. A brief review of the background and current legal issues prepared for college attorneys by a legal counsel to Princeton University.

171. *Connecticut Law Review* 3 (Spring 1971): 375-478. "Symposium: Issues of University Governance." Jorge I. Dominguez, "To Reign or to Rule: A Choice for University Boards of Trustees," 375-405; Robert B. Yegge, "If You Trust the Beneficiaries, You Don't Need Trustees," 406-416; John G. Hill, Jr., "The Fourteenth Amendment and the Student—Academic Due Process," 417-432; Robert L. Bard, "Protecting the Academic Community Against Internal Assault," 433-465; Gary R. Weaver, "All Is Not Quiet on the Academic Front," 466-478.

172. Dean, William J. Note—"Private College Discipline and Due Process Afforded to Students." *South Carolina Law Review* 23 (1971): 175-181. *Counts* v. *Voorhees College* (1970).

173. De Falaise, Louis, and William T. Robinson III. Note—"Students and the University: Group Interaction and the Law." *Kentucky Law Journal* 59 (1970-1971): 407-465. Well-prepared analysis of the student protest problem, survey of student rights from a legal perspective, and some proposed solutions for eight classes of people involved.

174. Drucker, Christine M. Comment—"School Regulations and the Rule Making Power of the University." *St. Louis University Law*

Journal 15 (Spring 1971): 467-490. Able discussion of *Esteban* v. *Central Missouri State College* (1969).

175. Emmet, Thomas A. "Ballot Box or Pandora's Box: What's Next for 18 Year Old Voters?" *College and University Business* 51 (October 1971): 45-48.

•176. Epstein, Norman L., and Thomas J. Cassamassima. "Student Financial Aid Termination—Analysis and Application of the Federal Riders." *College Counsel* 6 (1971): 70-106. This is among the best-outlined accounts and interpretations of the federal riders.

177. Frei, Michael. Note—"Campus Unrest, University Autonomy, and the Legal Process." *Utah Law Review* 1971 (Fall 1971): 355-367. Raises question of the extent to which the powers of the outside community should be brought to bear on campus problems and proposes appointment of a judicial branch within a state higher education board or commission to establish special judicial officers to handle such issues.

178. Gordon, Kenneth W. "Due Process: A Swing Toward Student Rights." *Journal of College Student Personnel* 12 (March 1971): 95-101. Argument that a student should not lose his rights as a citizen upon entering a university.

•179. Hodgkinson, Harold L., Warren Bryan Martin, et al. "Student Participation in Governance." In *The White House Conference on Youth*, 39-63. Berkeley: Center for Research and Development in Higher Education, 1971. 80 p. ED 055 537. MF-$0.96; HC-$4.97.

180. Hopkins, Bruce R., and John R. Myers. "Governmental Response to Campus Unrest." *Case Western Reserve Law Review* 22 (April 1971): 408-474. At the federal level: the Federal Organized Crime Control Act of 1970, higher education acts, Treasury and Justice Department warnings about the tax status of colleges and universities, use of the Federal Corrupt Practices Act of 1964, and proposed legislation in the 91st Congress—all examined and evaluated in their relation to campus unrest, with brief reference to action among the state legislatures.

181. Jacobson, Allen C. Note—"University Regulation of Students: An Uncompleted Exercise in Constitutional Law." *University of Miami Law Review* 25 (Spring 1971): 515-520. *Lieberman* v. *Marshall* (1970), a case regarding denial of recognition at Florida State University of a Students for a Democratic Society chapter.

*182. Karlesky, Joseph J., and D. Grief Stephenson, Jr. "Student Disciplinary Proceedings: Some Preliminary Questions." *Journal of Higher Education* 42 (November 1971): 648-656. Important distinctions are drawn between adversary and questionary proceedings, formal and informal approaches, academic and nonacademic offenses, and matters appropriate to campus tribunals versus the civil or criminal courts.

183. Keeney, Gregory D. Comment—"Aid to Education, Student Unrest, and Cut-off Legislation: An Overview." *University of Pennsylvania Law Review* 119 (May 1971): 1003-1034.

184. Lewis, Gordon F. "The Slow Road to Student Liberation." *AAUP Bulletin* 57 (December 1971): 495-490. Argument for according a more autonomous and adult status to students.

185. McHugh, William F. "Collective Bargaining and the College Student." *Journal of Higher Education* 42 (March 1971): 175-185.

*186. McInnes, William C., S.J. "A Statement of Rights for College Administrators." *Journal of Higher Education* 42 (May 1971): 374-386. The statement is explained and placed in the context of official statements regarding faculty, student, and administrative rights. Lewis B. Mayhew responds: "Thoughts on 'A Statement of Rights for College Administrators', " *id:* 387-391. Both are reprinted in item 85 (1975).

187. Note—"Equity on the Campus: The Limits of Injunctive Regulation of University Protest." *Yale Law Journal* 80 (April 1971): 987-1034.

188. Note—"Bringing the Vagueness Doctrine on Campus." *Yale Law Journal* 80 (May 1971): 1261-1291.

189. Note—"Freedom of Political Association on the Campus: The Right to Official Recognition." *New York University Law Review* 46 (December 1971): 1149-1180. Detailed and thoughtful reconstruction of the history and current issues.

190. Note—"Applying *Freedman* v. *Maryland* to Campus Speaker Bans." *University of Pennsylvania Law Review* 119 (January 1971): 512-520. Interpretation of the above case (1965) in relation to *Stacy* v. *Williams* (1969).

*191. O'Banion, Terry. "Humanizing Education in the Community College." *Journal of Higher Education* 42 (November 1971): 657-668.

See his 1972 book (53). He regards the move away from the production model to the humanistic model as the most fundamental issue for community colleges in the 1970's.

192. O'Toole, George. Note—"Recent California Campus Disorder Legislation: A Comment." *Harvard Journal on Legislation* 8 (January 1971): 310-332.

193. Pesci, Frank B. "The Ombudsman Concept in the Two-Year College." *Junior College Journal* 41 (May 1971): 30,32. Report of a 1969-1970 survey of 177 public two-year colleges in 30 states, three-fourths of those with enrollments of 2,000 and over responding. Thirteen reported having a campus ombudsman. Only 35 had studied the concept.

•194. Pettigrew, Harry W. "Due Process Comes to the Tax-Supported Campus." *Cleveland State Law Review* 20 (January 1971): 111-124. Ohio University professor of business law examines the due process concept and provides procedural guidelines regarding student discipline.

•195. Pettigrew, Harry W. "The University and the Bail System: In Loco Altricis." *Cleveland State Law Review* 20 (September 1971): 502-521. Also in *Law and Society Review* 5 (May 1971): 563-570. Presents grounds for release of the accused on his own recognizance as an alternative to the bail system, allowing for existence of community ties for the transient student similar to those he would have in his own home town.

196. Rosenfeld, Morton M. Note—"Campus Pamphleteering: The Emerging Constitutional Standards." *University of Michigan Journal of Law Reform* 5 (Fall 1971): 109-121.

197. Rowland, Ronald L.—Note—"College and Universities—Effect of House Bill No. 1219 on Controlling Campus Disorders." *Ohio State Law Journal* 32 (Winter 1971): 198-207. Discussion of three sections in the Ohio Revised Code.

198. Taylor, George D. "Colleges Move Toward Due Process Through Trial and Error Attempts." *College and University Business* 51 (October 1971): 24, 26.

•199. Villarreal, Diego L. "The Students' Constitutional Rights and the University Disciplinary Committee." *North Carolina Central Law Journal* 3 (Fall 1971): 53-74. Professor of government presents

guidelines to determine the effects and limits of several constitutional rights in relation to campus discipline policy.

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Index of Names

The numbers refer to bibliographical items, unless otherwise indicated

Abrams, Paul G., 248
Alexander, Kern, 46
Alexander, William M., 110
Altbach, Philip G., 22
Amsterdam, Anthony G., 133
Andes, John, 129
Armstrong, Ronald, 10
Armstrong, Timothy J., 111
Astin, Alexander W., and Helen S., 70
Atwell, Charles A., 154
Aussieker, Bill, 277
Bacigal, Ronald J., 244
Baier, Kurt, 295
Bailey, Theodore M., 162
Baldwin, Fletcher N., Jr., 130
Bard, Robert L., 171
Barilla, John, 131
Barkin, Thomas G., 278
Bayer, Alan E., 70
Beach, John A., 245
Beals, John T., 112
Beaney, William M., 21, 94, 163
Beckey, Sylvia, 302
Beeler, Kent D., 11
Behrens, John C., 12
Bemesderfer, Karl J., 41
Benson, Roger L., 164
Berlet, Chip, 71
Berman, David R., 202
Berns, Edward, 218
Berry, Charles R., 246
Beverage, Roger M., 132
Bible, Paul A., 113
Binder, John J., 219
Birnbaum, Norman, 47
Bisconti, Ann S., 70
Blackwell, Thomas E., 17, 65, 165
Blair, James W., Jr., 19
Blos, Peter, 269
Bloustein, Edward J., 247
Bond, Linda, 248
Borus, David M., 72, 279
Boulding, Kenneth E., 298
Bowden, Henry L., 40
Bowers, William J., 156
Bowles, W. Donald, 93
Boyle, James G., 41
Bracewell, William R., 55a, 220
Brakebill, Marwin B., 166
Brandt, Richard B., 296, 297
Branch, James A., Jr., 167
Brest, Paul A., 41
Brittain, Kerry T., 168
Brouder, Kathleen, 89, 90
Brubacher, John S., 38, 221
Brandeis, Louis D., p. 38
Butcher, Jonathan F., 222
Buchwald, Gerald J., 246
Bucklew, Neil S., 56, 223
Buss, William G., 249
Byse, Clark, 103
Callahan, Raymond E., 299
Camgemi, J.P., 250
Canavan, Francis, 224
Carrington, Paul D., 21, 41, 169
Carter, Robert L., 24
Caruso, Lawrence R., 170
Cashman, Paul H., 94
Cassamassima, Thomas J., 176
Cates, Richard L., 21
Cave, William M., 300
Cazier, Stanford, p. 24; no. 57
Chamberlain, Philip C., 250
Chambers, Merrit W., 48, 58
Chesler, Mark A., 300
Clark, Roger T., 121
Clayton, Claude F., Jr., 225
Clifford, Earle W., 94
Clowes, Darrell A., 226
Coe, Alan C., 227
Cohen, Carl, 301
Cohen, William, 94
Collins, Charles C., 29

Collins, John T., 134
Congressional Research Service, 302
Connecticut Law Review, 171
Cox, Jonathan C.S., 163
Cox, Joseph J., 133
Crary, John C., Jr., 114
Creamer, Don, 280
Dawes, Thomas A., 206
Dean, William J., 172
Deane, Sharon Louise, 251
Deegan, William J., 134
De Falaise, Louis, 173
Delgado, Richard, 252
Denver Law Journal, 94
Dewey, John, pp. 10, 40; no. 303
Diamond, Sondra, 253
Diener, Thomas J., 40
Doggett, Lloyd, 135
Dominguez, Jorge I., 171
Dragastin, Sigmund E., 304
Drexel, Karl D., 134
Drinan, Robert F., 24
Drucker, Christine M., 174
Dublikar, Ralph F., 207
Duffy, Patrick S., 63
Dunlap, Riley E., 13
Durbin, Thomas, 302
Duscha, Julius, 59
Elder, Glen H., Jr., 304
Emmet, Thomas A., 175
Epstein, Norman L., 176, 203
Erikson, Erik H., 305
Eudy, J. Clinton, 136
Farer, Tom J., 21
Feinberg, Joel, p. 19; no. 306
Feltner, Bill D., 204
Fernandez, 281
Fields, Cheryl, 55a
Fischer, Thomas C., pp. 8-9; no. 30, 55a, 59
Fisk, Winston M., 137
Fleming, Robben W., 21, 41
Forsyth, John D., 90
Frankena, William K., 298, 307
Frei, Michael, 177
Freund, Paul A., 298
Frey, Martin A., 138
Frick, G.W., 115
Fuller, Lon L., 308, 311
Furay, Sally M., 139
Gabor, Dennis, 309
Gaddy, Dale, 24
Galis, Leon, 228
Gehring, Donald D., pp. 24, 38; no. 64
Gelber, Seymour, 50
Gentry, Harold W., 42
Gerwith, Alan, 298
Gibbs, Annette, 205, 254
Giermanski, James R., 229
Goldstein, Alan, 255
Goldstein, Stephen R., 140
Goodman, Richard M., 41
Goodsell, David R., 204
Gordon, Kenneth W., 178
Gray, Fred D., 40
Greene, JeRoyd W., Jr., 116
Haddock, Robert M., 141
Hallberg, Edmond C., 117
Hammond, Edward H., 55a, 206
Hanson, David J., 73
Hardee, Melvene Draheim, 51
Harmes, Herman Edward, 31
Harris, Earl D., 55a
Hart, H.L.A., 310, 311
Haskell, Paul G., 142
Hawes, Leonard C., 256
Hefferlin, JB Lon, 20
Heffner, Ray L., 95
Henderson, Algo D., 96
Henderson, Jay, 282
Hendrickson, Robert M., 230
Herman, Joseph, 143
Hermann, Dale M., 118
Hill, John G., Jr., p. 7; no. 54, 60, 171
Hodgkinson, Harold L., 14, 97, 179
Hoffman, Peter M., 243
Hollister, C.A., 231
Holloway, John P., 21, 41, 257, 283
Holmes, Grace W., 21, 41
Hopkins, Bruce R., 180
Hornby, D. Brock, 232, 284
Horwitz, Richard J., 119
Howard, Roger, 55a
Jacobson, Allen C., 181
Jacobson, Robert L., 292

Jayson, Lester S., 302
Johnstone, Bruce C., 120
Kait, Richard E., 233
Kalaidjian, Edward C., 21
Kaplin, William A., 63
Karlesky, Joseph J., 182
Kaufman, Arnold S., 312
Kearney, Dorothy L., 134
Keeney, Gregory D., 183
Kellams, Samuel E., p. 4; no. 74
Keller, L. Drewe, 258
Kelly, Thomas E., Jr., 259
Kessler, David, 41
Killian, Johnny H., 302
Kirp, David L., 66, 260
Klamon, 75
Klotz, Neil, 76
Knauss, Robert L., 21, 41
Kohlberg, Lawrence, pp. 38-39, 42; no. 313
Korff, J. Michael, 77
Kovacevich, George J., 144
Kutner, Luis, 98
Ladd, Edward T., 265
La Morte, Michael W., 42
Laudicina, Robert, p. 12; no. 67, 78
Lerner, Alan J., 234
Leslie, David W., 79, 204, 232, 235, 262, 263
Lewis, Gordon F., 184
Linowitz, Sol M., 28
Linta, Edward, 80
Lippe, Richard A., 21
Lipset, Seymour Martin, 22, 43
London, Herbert, 145
Loyola Law Review, 100
Lucas, Roy, 24, 94
Lunsford, Terry F., 94
Lustman, Seymour L., 314
Lutz, Robert, 94
McClennan, Stephen, D., 94
McCoy, Joseph L., 121
McDonough, John R., 100
McHugh, William F., 185
McInnes, William C., 186
McKay, Robert B., 94
McGrath, Earl J., 32
Magrath, C. Peter, 94
Margolin, Ephraim, 63
Marinelli, Arthur J., Jr., 236
Mayhew, Lewis B., 61, 186
Maxwell, Richard, 146
Meiklejohn, Douglas, 147
Mendenhall, George E., 315, 316
Mesarovic, Mihajlo, 317
Meskill, Victor P., 258
Michael, Donald N., 318
Miller, Arthur R., p. 7; no. 319
Miller, David J., 119
Miller, Lucy, 90
Mills, Joseph L., 33, 44
Monypenny, Philip, 94
Mooney, James T., 21
Morris, Arval A., 285
Muhlrad, Patricia S., 286
Munch, Christopher H., 94
Myers, John Holt, 41
Myers, John R., 180
Najita, Joyce M., 52
Niblett, W. Roy, 47
Niehuss, Marvin, 21
Notes (author not given), 101, 102, 136, 148, 150, 153, 187-190, 207-209, 264, 265
Nussbaum, Michael, 34
O'Banion, Terry, 53, 191
O'Connor, David F.P., 151
O'Hara, William T., p. 7; no. 54
O'Neil, Robert M., 41, 88, 152, 237, 266
O'Toole, George, 192
O'Toole, George A., Jr., 210
Osborn, Earl D., 267
Peck, Dennis L., 13
Perkins, James A., 103
Pesci, Frank B., 193
Pestel, Eduard, 317
Pettigrew, Harry W., 194, 195
Piaget, Jean, p. 40
Pierce, Milo C., 15
Planisek, R.J., 23
Pollack, Steven I., 122
Polowy, Carolyn I., 81
Popper, Karl R., 320
Powell, Robert S., Jr., 94
Power, Eugene B., 41
Price, Dan R., 238
Rabban, David M., 239
Ratliff, Richard C., 55

Reddoch, James W., 55a
Renaud, Ruth, 55a
Richardson, Richard C., Jr., p. 42; no. 123, 134, 154
Ritvo, Samuel, 321
Robinson, Lora H., 16
Robinson, William T. III, 173
Rolapp, R. Richards, 160
Rosenfeld, Morton M., 196
Rosenthal, Robert R., 155
Rossman, Michael, 268
Rothman, Jack, 322
Rothstein, Arnold M., 211
Rowland, Ronald L., 197, 212
Ryan, Jennifer, 62
St. Antoine, Theodore J., 41
Salem, Richard G., 156
Sandman, Peter M., 45
Satryb, Ronald P., 263
Schafer, Joyce R., 269
Schwartz, Edward, 18, 25, 55a, 94
Schwartz, Herbert T., 157
Schwelb, Egon, 323
Scott, Rachel, 94
Scranton, William W., 35
Semas, Philip W., p. 4; 293
Seton, Paul H., 324
Seymour, Richard G., 270
Shark, Alan R., 82, 89, 90, 213, 240, 274, 287
Shoenfeld, Janet D., 16
Sims, O. Suthern, Jr., 36, 220
Sivulich, Stephen, 84
Small, David Bruch, 83
Smart, James M., Jr., 124
Smelser, Neil J., 324
Smith, Norvel, 288
Solomon, Erwin S., 46
Sorgen, Michael S., 63
Sowell, Myzell, 41
Stanton, Charles M., 214
Stamp, Neal R., 94
Stephenson, D. Grief, Jr., 182
Stevens, George E., 289
Stevens, Walter W., 41
Steward, Shirley E., 271
Swenson, Norman, 274
Tabb, Judy N., 125
Tanner, Eric, 272
Taylor, George D., 198
Taylor, Harold, 290
Terry, Marilyn Jean, 69
Tharp, Richard A., 283
Thierstein, William R., 104
Thigpen, Richard A., 40
Thurston, Alice, 53
Tice, Terrence N., 82, 85, 90, 325
Todd, Stan Thomas, 273
Tramutola, Joseph L., Jr., p. 12; no. 67, 78
Trux, Hugo R. IV, 256
Twohig, R. Raymond, Jr., 105
Van Alstyne, William W., 21, 94, 106, 126, 127
Vermilye, Dyckman W., 49
Villarreal, Diego L., 119
Vladeck, Judith P. and Stephen C., 86
Vlastos, Gregory, 298
Wagner, Carroll L., Jr., 41
Walters, Donald E., 274
Watkins, J. Foster, 154
Wax, Harvey I., 215
Weaver, Gary R., 171
Wendelsdorf, Scott T., 158
Weston, Charles H., 159
Wilkinson, Ernest L., 160
Wilson, Douglas, 161
Wilson, James B., 275
Wilson, Logan, 94, 107
Winston, Kenneth I., 291
Wisconsin Law Review, 200
Wise, W. Max, 241
Wisner, Ronald E., 279
Witmer, David R., 108
Wren, Scott C., 87
Wright, Charles Alan, 128
Wright, Stephen, 94
Yarbrough, S.B., 216
Yarnell, Michael A., 201
Yegge, Robert B., 109, 171
Young, D. Parker, pp. 24, 38; no. 37, 40, 42, 64, 91, 217, 242, 276
Yudolf, Mark G., 66, 260
Zumwinkle, Robert B., 41

Index of Subjects

NOTE — A table of cases explicitly referred to in the text or in titles or annotations follows. Institutions mentioned only in these cases are not indexed. *The numbers refer to bibliographical items, unless otherwise indicated.*

Academic freedom, p. 10, 42, no. 27, 101, 106 (*see also* Students)

Academic judgment, p. 23

Academic reform. *See* Students, protest.

Activism, student, new era of, pp. 14-17 *see also* Students, protest)

Administration, administrators: conflict management, pp. 12, 16-17, 23; de communitatis approach, pp. 12, 41-42; decision-making skills, p. 44; definition, p. 24; formal and informal procedures, p. 43; guidelines, pp. 40-46, no. 69, 220, 252, 263, 269; judicial trends re: pp. 41-42, no. 140 (*see also* Courts); law for, 17, 36, 41, 46; leadership, pp. 39-40; lobbying, p. 45; models, pp. 12, 16-18, 38, no. 96; new structures needed, pp. 15, 39-40; perspectives on campus unrest, 41 (*see also* Students, protest); planning, p. 44; regulatory power, pp. 38-39, 45; rights, p. 3, no. 44, 220; seminar on, 232; styles, pp. 39-40; training of, pp. 44-46; tribunal of, 41; tripartite committees, p. 46. *See also* Community colleges

Admissions policies, 88, 225, 260, 262, 266, 271, 275,, 285

Adolescents, young adults (developmental needs), pp. 14-16

Alabama, 21 (text)

American Association for Higher Education, 248

American Association of State Colleges and Universities, 41 (text)

American Association of University Professors, 92

American Bar Association, 21 (text), 26, 41 (text)

American Civil Liberties Union, 24, 27

American Council on Education, 28, 41 (text), 107

Associated Student Governments of America, 19

Association of American Colleges, 92

Bibliographies, 10-16, 85; periodicals, pp. 3-4

Board of trustees, p. 46, no. 41, 171, 246

California, University of, 288

California State Colleges, 203

Carnegie Commission on Higher Education, 39, 47; critiques of reports, 47, 87

Collective bargaining: faculty, pp. 12, 15, no. 79, 85, 86, 90; public employment, pp. 11-12; students, pp. 5, 12, 45, no. 52, 56, 71, 72, 76, 80-82, 89, 90, 151, 185, 200, 213, 215, 223, 227, 240, 248, 274, 277, 279, 287; Research Project on Students and Collective Bargaining, p. 5, no. 89

Collegiality, pp. 10, 16-18, 23

College law: case law (characterisics of), pp. 7, 31, 34; general, pp. 3, 7, no. 1-9, 17, 38, 44, 46, 48, 54, 58, 63-66, 137, 152, 160, 221, 237; history of, 165

College Press Service, 7

Columbia University, 21 (texts)

Community colleges: administration, 24, 154, 186; collective bargaining, 279; discipline, 129; education models, 191; ombudsman, 193; student development, 53

Conflict management, pp. 2, 10, 12, 16, 46, no. 79, 204

Constitution. *See* U.S. Constitution

Courts in higher education, pp. 2, 6-7, 45, no. 237 (*see also* College law, Discipline, Due process); restraint of, pp. 1, 6-7, 23, 41

Covenants, pp. 12-13

Criminal, adversary models (vs. civil), pp. 8, 25, 27-28, 44

Deans, 21, 204, 220 (*see also* Administration)

Decision-making skills, pp. 3, 44

Democracy, pp. 1, 10, 12, 42, 45, no. 228, 303

Demonstrations, pp. 5, 14-15, 31-33; advance notice, pp. 26-27, 32; with other change tactics, pp. 15-16. *See also* Students, protest

Discipline, campus: accounts of (general), pp. 3-4, 44 no. 41, 84, 94, 122, 123, 163, 167, 169, 182, 216, 226, 276; administrative tribunal, 41; bail system, p. 43, no. 195; codes, p. 25, no. 21, 41, 57, 105, 114, 132, 174, 236; coerced testimony, 147; court involvement, pp. 3, 5-6, no. 103, 140, 142, 177, 221, 237, 239; double jeopardy, p. 27, no. 108, 259; equal protection, p. 24, no. 162, 231; expulsion and suspension, pp. 25, 26, 28, 39, no. 118, 164, 210, 239, 243, 245; fairness and reasonableness, pp. 23, 26, 28, 39-40, 45, no. 163, 245; guidelines, pp. 22-23, 43-44, no. 102, 199, 209, 263; hearing board, officers, pp. 25-26, no. 203 (*see also* Due process); honor system, 284; independent hearing examiner, 41; injunctions, p. 35, no. 21, 41, 143, 155, 187; intelligence gathering, 41; interim suspension, p. 35; judicial standards, 21, 24, 161; judiciary systems, pp. 2, 5, 21, 45, no. 55a; legislative involvement, 114, 149 (*see also* Legislative responses); right to counsel, 138 (*see also* Due process; Students, attorneys for); rules, specificity of, pp. 26-27 (*see also* Due process, vagueness and overbreadth); rules of evidence, 146 (*see also* Evidence); sanctions, 156; scope, 122; self-incrimination, pp. 27-28, no. 291; suspension (*see* explusion, above); temporary restraining orders, 41. *See also* Administration, College law, Due process, Faculty, Students, Student rights.

Discrimination, pp. 15, 44, no. 81 (*see also* DeFunis, in Table of Cases)

Disruption criterion, pp. 8-9, 25, 30-35

Documents (ED-numbered), p. 48, no. 10, 12-15, 18, 23, 27, 29, 40, 51, 56, 57, 68, 73, 74, 79, 85, 108, 129, 179, 248, 251, 282

Due Process: general, pp. 24-29, no. 30, 41, 57, 68, 69, 102-105, 124, 129, 132, 133, 142, 153, 162, 163, 167, 171, 178, 194, 214, 216, 217,, 219, 224, 231, 258, 263, 267, 273; acquiescence, p. 27; defense, capacity to prepare, pp. 26, 28; hearings, pp. 7, 25-26, 27-28, 35, no. 116; in the classroom, 217; judicial intervention, 118; notice of hearing, pp. 7, 25, 27-28, 35; overbreadth principle (*See* vagueness, below); reasonable time, pp. 25, 35; record, p. 25; right to counsel, pp. 9, 25, 29, no. 138; rules of evidence, p. 9, no. 146 (*see also* Evidence); self-incrimination, pp. 27-28; state action principle (*See* State action); student testimony, 147; summary exclusion, 267; vagueness and overbreadth principles, pp. 2, 25, 26-27, 35, 38-39, 44, no. 105, 133, 148, 188, 273; witnesses, pp. 25, 26, 28, 29. *See also* College law, Discipline, Ombudsman, Outside speakers, Privacy, Student rights, U.S. Constitution.

Education Commission of the States, 6, 68

Employment relations, 85, 86 (*see also* Collective bargaining; Students, employees)

ERIC document numbers, see Documents

Evidence, p. 34; "beyond a reasonable doubt," pp. 13, 38; "clear and convincing," p. 38; "preponderance of the evidence," p. 38; "substantial," pp. 8, 26, 38

Faculty: in court, 41; rights, p. 3. *See also* Collective bargaining, Tenure.

Family Rights and Privacy Act (1974), p. 38

Ferris State College, 80

Free speech. *See* U.S. Constitution, first amendment.

Gay students, 264

Goverance. *See* Students, participation.

Grievance and arbitration, p. 23

Group process skills, pp. 2, 17, 45

Israelites, p. 12

Law enforcement on campus (police and security), 36, 41, 50, 158, 201, 202; martial law, 158

Law schools, 88, 225, 260, 266

Laws and regulations: morality and, pp. 10-13, 21-23, 39-40, 42, 44; rule of law, 29-30; spirit vs. letter, pp. 13, 42, 45

Legislative responses to campus unrest, pp. 1-2, 45, no. 21, 41, 112 (Mo.), 114, 141, 148, 176, 180, 183, 192 (Calif.), 197 (Ohio), 209 (Wash.), 212, 237

Lobbying, p. 45 (*see also*, Students, lobbying)

Michigan, University of, 41, 90

Missouri, 21 (text), 112

Morality, pp. 2, 4, 10-13, 16, 20-21 (*see also* Law, Rights); moral point of view, pp. 11, 20; public morality, p. 11; stages of, pp. 39-40; vs. prudential approaches, pp. 11, 16

National Association of College and University Attorneys (NACUA), 1, 65
National Association of Student Personnel Administrators (NASPA), 21 (text), 24 (text), 92 (text)
National Association of Women Deans, Administrators, and Counselors (NAWDAC), 92 (text)
National Labor Relations Act, 151
National Organization on Legal Problems of Education (NOLPE), 2
National Student Lobby, 5
Natural law, 99
New Mexico, 167
New York City, Board of Education, 21 (texts)
New York State, 21 (text), 114, 149
New York University, 145
Ohio's state universities, 234
Ombudsman, p. 45, no. 98, 145, 193
Open society, pp. 4, 10, 42, no. 320
Outside speakers, p. 33, no. 121, 159, 190, 205
Periodicals, 1-9
Philosophers and legal scholars, p. 18
Police and security, campus. *See* Law enforcement.
Political association on campus, p. 45, no. 189
Politics, pp. 5-6, 45; no. 41 (*see also* Students, protest)
President's Commission on Student Unrest, 35
Press, freedom on campus, pp. 33-34, no. 12, 59, 205, 206, 218, 220, 233, 265, 272
Privacy (search and seizure), pp. 36-38, no. 68, 111, 113, 115, 229, 244, 247, 249, 252, 269
Private colleges, pp. 7, 18, 29, no. 21, 83, 118, 119, 124, 125, 139, 152, 153, 160, 172, 230, 243, 245, 258
Public institutions, responsibilities of, p. 18
Public Interest Research Groups (PIRG), pp. 5, 46
Public school law, 63, 66
Racial crisis, 24
Reporters' Committee for Freedom of the Press, 8
Research Project on Students and Collective Bargaining, p. 5, no. 89
Research tools, 13, 23, 51, 83 (*see also* Bibliographies)
Rights: absolute vs. prima facie, p. 26; as values issues, pp. 2, 15; campus, 242 (*see also* Administrators, Student rights); civil, p. 8; constitutional, p. 18 (*see also* U.S. Constitution); definition, p. 19; discretionary, p. 22; due process, p. 19 (*see also* Due process); free speech, p. 23 (*see also* U.S. Constitution); history of, pp. 20-21; human, pp. 18, 20-21; in personam and in rem, p. 19; institutional, pp. 18, 22-23; legal, pp. 18, 21-22; moral, pp. 20-21 (*see also* Law, Morality); negative and positive, p. 19; privacy, pp. 7, 23, 36-38 (*see also* Privacy, U.S. Constitution); procedural, pp. 6, 7-9, 23-24; property, pp. 7, 30, 32, 35, 36-38; retained by the people, p. 18; substantive, pp. 2, 8, 23, 25, 45; vs. license or privilege, p. 18
San Francisco State College, 144
Search and seizure, p. 19 (*also see* Privacy; U.S. Constitution, fourth amendment)
Secondary schools, 45, 63, 66, 101, 140, 142
Social organization and control, p. 11
Stanford University, 77
State action principle, pp. 7, 29, no. 119, 125, 147, 149, 150, 230, 243
Student associations, government, lobbying. *See* Students.
Student personnel administration, 67
Student rights and responsibilities: general accounts, pp. 12, 18-19, no. 19, 21, 24, 26-28, 30, 34, 37, 40-42, 44, 45, 54, 55, 60, 94, 109, 127, 128, 139, 208, 255; definitions, p. 18; history of student power and rights, pp. 14-15, no. 33, 126, 139, 140, 161, 165; recommendations and reports, 21, 24, 28, 34, 35, 39, 41, 45, 78, 123, 208; seminars on, 127, 232; statements, 18, 19, 21, 24, 26, 41, 83, 92, 123; trends, pp. 14-17, no. 140; voting, 44, 64, 73, 286. *See also* Collective bargaining, College law, Discipline, Due process, Law enforcement, National Association of Student Personnel Administrators, National Student Lobby, Ombudsman, Students for a Democratic Society, U.S. National Student Association.
Students: academic freedom, 18, 101, 106, 125; affairs, 257, 283, 288; age of majority, citizen's rights, pp. 6, 37-38, no. 73, 175, 178, 184, 261, 281; aid restrictions, p. 45, no. 24, 48, 183 (*see also* Legislative responses); associations, 246; attorney for, pp. 43, 45,

no. 41, 135, 234 (*see also* Due process, right to counsel); co-ed dorms, p. 23; committee membership, 256; constitutional approach to student-institutional relations, pp. 16-17, 41-42, 44; consumers, p. 5, no. 5, 68, 100, 287; contractual relation, pp. 42, 44, no. 222; cooperatives, pp. 5, 46, no. 241; corporations, no. 241; developmental needs of, pp. 14-15, 42, no. 53, 296, 304, 305, 314, 321, 324; employees, p. 45, no. 151, 215; expulsions and suspensions, 118, 164, 166, 210, 239 (*see also* Discipline); fiduciary relations, pp. 42, 44; gay students, 264; government, p. 45, no. 110, 280; graduate assistants, 52, 90, 200; in court, 21 (*see also* Court); influence, sources and modes of, pp. 2, 5, 45, no. 74; in loco altricis situation, 195; in loco parentis doctrine, pp. 2, 16-17, 19, 39, 41, no. 31, 96, 126, 161, 168; legal aid clinic for, 41; litigation by, 41; lobbying, p. 5, no. 62, 75, 282; major concerns of, 19-22; on boards of trustees, p. 46 (*also see* Boards); pamphleting by, 131, 196; participation in governance and decision-making, pp. 2, 4, 5-6, 16, 40, 42-43, 45-46, no. 10, 14-16, 29, 32, 53, 77, 87, 93, 95-97, 100, 117, 120, 123, 134, 154, 179, 191, 198, 211, 228, 239, 256, 268; power, restraints on, 235; protest, activism, and dissent, pp. 1, 3, 5-6, 11, 14-17, 42, no. 13, 20-28, 35, 39-41, 43, 70, 94, 99, 107, 130, 144, 171, 173, 290; records, p. 38, no. 68, 170, 294; self-supporting, 278; unions, p. 5 (*see also* Collective bargaining); work-study grants, p. 45. *See also* Student rights.

Students for a Democratic Society (S.D.S.), 181, 207

Tenure, 58, 224

Texas, University of, 41, 135

United Nations, "Universal Declaration of Human Rights," pp. 20-21

United States Constitution, p. 40

- Bill of Rights, p. 18
- First Amendment, pp. 30-34, no. 21, 24, 121, 157, 205, 206, 208, 231, 247, 250, 254, 264, 270, 272 (*see also* Demostrations, Gay students, Outside speakers; Pamphleting, Press; demonstrations, pp. 31-33; free speech and expression, pp. 19, 27, 30-31; off-campus speakers, p. 33; prior restraint, p. 31; student newspapers, pp. 33-34
- Fourth Amendment (search and seizure), pp. 7, 36-38, no. 68, 111, 113, 115, 208, 229, 244, 247, 249, 250, 252, 269
- Fifth Amendment, pp. 24, 27
- Sixth Amendment, p. 29, no. 250
- Fourteenth Amendment, pp. 7, 24-29, no. 119, 124, 125, 147, 149, 150, 162, 171, 250 (*see also* Due process)

United States National Student Association, 4, 34

Washington State, 209

Wisconsin, 21 (text), 108

Wisconsin, University of, 200

Table of Cases

See *College Law Digest* (1), *The College Student and the Courts* (3), Blackwell (65), Van Alstyne (127), and items on college law and student rights for extensive tables of relevant cases. *The numbers refer to bibliographical items, unless otherwise indicated.*

Ames v. Attorney General (1955), 246

Antonelli v. Hammond (1970), p. 33

Arrington v. Taylor (1974), p. 34

Barker v. Hardway (1968), p. 29

Bayless v. Martine (1970), p. 32

Bazaar v. Fortune (1973), p. 34

Becker v. Oswald (1973), p. 29

Blanton v. State University of New York (1973), p. 28

Board of Higher Education v. SDS (1969), 155 passim

Board of Regents of State Colleges v. Roth (1972), p. 7

Board of Supervisors of Louisiana State University v. Lewark (1973), p. 31

Braxton v. Municipal Court (1974), p. 35; no. 267

Brookins v. Bonnell (1973), p. 6

Brooks v. Auburn University (1969), p. 33

Buttny v. Smiley (1968), p. 31

City of Athens v. Wolf (1974), p. 36

Connolly v. University of Vermont (1965), p. 6

Counts v. Voorhees College (1970), 172

DeFunis v. Odegaard (1973), 88, 260, 266, 275, 285

Dickey v. Alabama State Board of Education (1967), p. 33

Dickson v. Sitterson (1968), p. 33

Dixon v. Alabama State Board of Education (1961), pp. 8, 28, 39, 40; no. 55, 55a, 57, 161, 214, 219

Edwards v. Board of Regents of Northwest Missouri State University (1975), p. 27

Esteban v. Central Missouri State University (1967-1969), pp. 8, 27, 28, 32; no. 132, 136, 174

Evers v. Birdsong (1968), p. 32

Foley v. Benedict (1932), p. 6

Freedman v. Maryland (1965), 190

French v. Bashful (1970), pp. 8-9; no. 55a, 163

Furutani v. Ewigleben (1969), 147

Gardenshire v. Chalmers (1971), p. 35

Garshman v. Pennsylvania State University (1975), p. 29

Gay Students Organization v. Bonner (1974), 264

General Order (Esteban, 1968), pp. 8, 27

Goldberg v. University of California (1967), p. 41

Goss v. Lopez (1975), p. 6

Greenhill v. Bailey (1975), p. 6

Hammond v. South Carolina State College (1967), p. 31

Haynes v. Dallas County Junior College District (1974), pp. 29, 33

Healy v. Hames (1971), 207

Jenkins v. Louisiana State Board of Education (1975), p. 25

Joyner v. Whiting (1972), p. 34; no. 233, 265

Keene v. Rodgers (1970), p. 36

Keys v. Sawyer (1973), p. 6

Knight v. State Board of Education (1961), p. 28

Kwiatowski v. Ithaca College (1975), p. 29

Lieberman v. Marshall (1970), 181

Marin v. University of Puerto Rico (1974), p. 37

Marzette v. McPhee (1968), p. 35

Molpus v. Fortune (1970), p. 33

Moore v. Student Affairs Committee of Troy State University (1968), p. 36

Olmstead v. United States (1928), p. 38

Norton v. Discipline Committee of East Tennessee State University (1969), 131

Papish v. Board of Curators of University of Missouri (1972), p. 31; no. 272

People v. Cohen (1968), p. 36
People v. Lanthier (1971), p. 36
Piazzola v. Watkins (1971), p. 36
Powe v. Miles (1968), 125, 147
Roth (see Board of Regents of State Colleges)
Saunders v. Virginia Polytechnic Institute (1969), p. 32
Schiff v. Williams (1975), p. 34
Scroggin v. Lincoln University (1968), p. 32
Shelton v. Tucker (1966), p. 38
Siegel v. Regents of the University of California (1970), p. 32
Sill v. Pennsylvania State University (1972), p. 28
Sinderman v. Perry (1972), p. 6
Slaughter v. Brigham Young University (1975), p. 25-26
Smith v. Ellington (1971), p. 46
Smith v. University of Tennessee (1969), p. 33
Smyth v. Lubbers (1975), p. 37
Snyder v. Board of Trustees of the University of Illinois (1968), p. 33; no. 24 (text)
Soglin v. Kauffman (1968), p. 26; no. 24 (text)
Speake v. Grantham (1970), p. 36
Stacy v. Williams (1969), p. 33; no. 190
State v. Johnson (1975), p. 36
State v. Wingerd (1974), p. 36
State Board of Education v. Anthony (1973), p. 35
Stricklin v. Regents of University of Wisconsin (1969), p. 35
Sword v. Fox (1971), p. 32
Thonen v. Jenkins (1973), p. 31
Tinker v. Des Moines Independent School District (1969), pp. 8-9, 30, 40; no. 24 (text), 161, 251
Walgren v. Board of Selectmen (1974), 286
Wellner v. Minnesota State Junior College Board (1973), p. 6
White v. Knowlton (1973), p. 37
Winnick v. Manning (1972), p. 28
Wong v. Regents of the University of California (1971), p. 6
Wright v. Texas Southern University (1968), p. 28
Yench v. Stockmar (1973), p. 27
Zanders v. Louisiana State Board of Education (1968), p. 32

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